SUPREME COURT, U.S.

AUG 31 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No.

INDIANAPOLIS NEWSPAPERS, INC.,
Petitioner,

vs.

ROBERT H. FIELDS,
Respondent.

SEPARATE APPENDIX TO PETITION FOR WRIT OF CERTIORARI.

THOMAS M. SCANLON,
RAYMOND W. GRAY, JR.,
1313 Merchants Bank Building,
Indianapolis, Indiana 46204,
Attorneys for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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Exhibit 1 (to Complaint Paragraph 1).

Complaint Exhibit 1 (Tr. 43-44; 2627; SR 33-34; SE 181)* is a copy of two articles published on October 27, 1965. Both were front page articles. One carried a large 8-column headline, "Deputy Accused in Death," a two-column sub-headline, "Ex-Inmate Says Reagan Beaten, Kicked in Jail," and reads as follows:

> A former inmate of the Marion County Jail charged yesterday that a prisoner who died of pneumonia brought on by a vicious beating had been attacked by an angry deputy sheriff. 1-1-7-1
>
> The sheriff's office had reported previously that the prisoner Elmer L. Reagan, 50 years old, was beaten viciously when he was put in a cell with a mental patient who later was charged with murder. 1-1-7-2
>
> The Marion County Grand Jury, Prosecutor Noble R. Pearcy and Dr. Robert C. Collins, coroner, began an investigation of the prisoner's charge after it was brought to light yesterday by The Indianapolis Star. 1-1-8-3
>
> The Prisoner testified before the jury last night after the prosecutor's office received a notarized statement telling of the deputy's attack before Reagan died Aug. 7. 1-1-8-4

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* Record citations in this separate appendix are identified as follows:

"Tr. ...." refers to the transcript of the record and evidence in the trial court and, as filed with the Supreme Court of Indiana (in 8 volumes with pages consecutively numbered);

"SR ...." refers to the Summary of Record portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

"SE ...." refers to the Summary of Evidence portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

"App. Br. ...." refers to the Argument portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

All of such citations refer to portions of the Record before the Supreme Court of Indiana, as certified to by the Clerk of that Court and now lodged with the Clerk of this Court.

Reagan was beaten by the deputy July 14, the prisoner stated. 1-1-8-4

It was learned last night the prisoner was picked up at 4 p.m. by sheriff's detectives who tried to get a statement from him. He was questioned at the jail again after he appeared before the grand jury. 1-1-8-5

In both sessions with sheriff's investigators at the jail, the prisoner refused to give them a statement. He was released about 9:30 p.m. yesterday. 1-1-8-6*

The second-degree murder charge against the mental patient, William A. Brown, still is pending before the grand jury. 1-1-8-7

The prisoner said yesterday Reagan, 440 Massachusetts Avenue, was beaten by the deputy after Reagan asked for medicine. 1-1-8-8

"They had several arguments," the prisoner said. "Reagan said he wanted his medicine and the deputy told him he didn't have any medicine to give. Reagan called the deputy a name and the deputy unlocked the cage and grabbed Reagan." 1-1-8-9

The prisoner said the deputy told Reagan "You'll eat those words," and then kicked Reagan in the back. 1-1-8-10

"The deputy twisted Reagan's arm up behind him and began pushing him toward the basement door," the prisoner said. 1-1-8-11

When Reagan and the deputy disappeared through the door, another deputy followed them down the stairs, the prisoner said. Then he heard screams coming from the basement. 1-1-8-13

"The two deputies came up after about five minutes," the prisoner said, "and were followed by

* The numbers at the end of each paragraph of each exhibit were inserted by the plaintiff for purposes of reference. The first of such numbers designates the exhibit number; the second number designates the page of the newspaper on which such paragraph was found; the third number designates the column on such page; and the fourth number designates the paragraph number in such column. This was so alleged in the complaint. See, *infra*, p. A175.

a third deputy who must have already been in the basement." 1-1-8-12a

"In about an hour, the deputy who grabbed Reagan the first time went back down the stairs and I heard more screaming. It sounded like the man kept screaming 'Your're killing me—you're killing me,' and then the deputy came back up the steps." 1-1-8-13

The deputy did not return down the stairs until his shift was due to change that night, at 10:45 p.m. When he went down the stairs, he returned with two mental patients and put them in a cage where attorneys meet inmates, then brought Reagan upstairs and put him in the same cage, the prisoner stated. 1-1-8-14

"When the deputy brought Reagon upstairs, Reagan was all bent over and moaning and holding his midsection," the prisoner said. "The deputy called Reagan a 'contrary son of a b . . . .' and hit him in the —1-1-8-15—back of the neck and knocked Reagan into the attorney's cage and against a radiator. "The deputy stood over Reagan and said, 'You'll watch who you call a . . . . from now on' and then he kicked Reagan in the midsection; Reagan screamed when the deputy kicked him and kept crying to please get him a doctor. But pretty soon Reagan just laid there and when it got quiet I went to bed." 1-14-3-2

The prisoner said he learned the following morning that the deputy in charge of the third shift in the jail had sent Reagan to a hospital. "I learned later he died," he said. 1-14-3-3

The deputy accused of the beating conferred briefly with the third shift sergeant and then left, the prisoner said. 1-14-3-4

Reagan, who died in Marion County General Hospital, suffered 12 broken ribs and internal injuries. 1-14-3-4

His death and the sheriff's department account of the beating were not made public until The Star re-

ceived a tip to "investigate the death of a guy named Reagan from the jail." 1-14-3-5

On Aug. 11 a check of the case disclosed that the only official report available was an autopsy report from Dr. Marvin D. Dziabis, a deputy coroner, who said Reagan died of pneumonia brought on by a beating. 1-14-3-6

At that time there was no sheriff's report of the beating, Reagan's hospitalization, or who was suspected of beating him. An investigation was not started until the circumstances of the death were bared. 1-14-3-7

The murder charge was lodged against Brown, 24, 401 North Illinois Street, on Aug. 13, by sheriff's investigator James Mellene, who said four eye witnesses furnished him with evidence. 1-14-3-5

On Aug. 11, Capt. Richard Scott, chief jailer, said Deputy Jack Churchill, assigned to the jail, told him Reagan had been a cellmate of Brown's and that Churchill believed Brown was responsible for the beating. 1-14-3-9

But Scott gave no reason why Brown, described as a violent mental patient, was placed in the same cell with Reagan, who had been arrested on a drunkenness charge. 1-14-3-10

Pearcy and James E. Bath, grand jury deputy, said subpenas for all person's named in the prisoner's statement will be issued immediately. They include four deputies and seven prisoners. 1-14-3-11

Coroner's investigator Bethel E. Gaither said he never had been satisfied with the account of Reagan's death. He promised to investigate "every possible aspect" of the case with the grand jury. 1-14-3-12

He said there was sufficient evidence to have the coroner's office reopen the case and submit evidence to the jury. 1-14-4-1

Pearcy met for 25 minutes with Sheriff Robert H. Fields to inform him of the charges. Fields was visibly shaken when he left the meeting. He said he would

follow "whatever course is necessary to get to the bottom of this." 1-14-4-2

Pearcy said it would be necessary to wait until next week to hear from all persons concerned since some of the prisoners who are to testify will have to be brought from other cities. 1-14-4-3

The prisoner who gave the statement said he did it because "I've been in and out of that jail a lot of times. That could have been me that got beaten to death." 1-14-4-4

Pearcy said the prisoner testified before the grand jury an hour and 15 minutes last night. He said the grand jury probe would continue today, but refused to say who else would be called to testify." 1-14-4-5

The second article in Complaint Exhibit 1 (Tr., p. 2627) carried a one-column headline, "Reporter Digs 11 Weeks To Get Facts", and reads as follows:

Rick Johnson, reporter for The Indianapolis Star whose investigation of the beating-death of Elmer L. Reagan led to the Marion County Grand Jury probe yesterday, has been working 11 weeks on the story. 1-1-7-3

On Aug. 11 he first discovered that Reagan had died. He reported it in The Star the next day. 1-1-7-4

Then two days later on Aug. 14 he received a tip from a man who told him: 1-1-7-5

"You haven't even got half of the story. The nut didn't kill that man. A deputy did." 1-1-7-6

The tipster gave Johnson the name of the deputy and some advice: 1-1-7-7

"Don't start nosing around the jail. They (prisoners and deputies) are scared to death. No one dares to talk about it." 1-1-7-8

Johnson waited a few days and then began asking questions of his tipsters about what he had heard. Deputies and former inmates said they, too, had heard the story but could not provide detailed information.

They promised to —(1-1-7-7)—relay any information they obtained. 1-14-1-1

The vital tip came at 1 a.m. Oct. 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14. The deputy provided Johnson with the name of the alleged attacker and with names of other prisoners who saw the attack and were willing to talk. Some had been moved to other penal institutions. 1-14-1-2

On Oct. 8 another deputy gave Johnson the names of deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cellblock who could have seen the beating. 1-14-1-3

The two tipsters had given almost identical information. 1-14-1-4

Judge Eugene M. Fife Jr., Criminal Court, Division 1, was informed about the information Johnson received. 1-14-2-1

On Oct. 21 he called in the prisoner who had talked to the deputy. The prisoner gave Judge Fife and Johnson the entire story of the beating. 1-14-2-2

Fife then advised that the Marion County Coroner's Office be notified. The next day, Bethel E. Gaither, chief investigator for the coroner, and Johnson met in Fife's office with the prisoner. At that session the prisoner made a statement and signed it. It then was notarized. 1-14-2-3

Last Monday Gaither showed the statement to the coroner, Dr. Robert C. Collins, who ordered the information taken to the grand jury. 1-14-2-4

Yesterday Gaither turned the statement over to James E. Bath, chief deputy for the grand jury, and to Prosecutor Noble R. Pearcy. They took it to the grand jury. 1-14-2-5

Exhibit 2 (to Complaint Paragraph 2).

Complaint Exhibit 2 (Tr. 45-48; 2810; SR 35-38; SE 612; 691) is a copy of three articles and one editorial published on October 28, 1965. Two of the three articles were on the front page. The third appeared on page 7. The editorial appeared on the front page. One of the front page articles carried a large 8 column headline, "Beating Witness Vanishes", a two column subheadline, "Sheriff Fields Suspends Two Of His Deputies", and reads as follows:

> The key witness in the investigation of the fatal beating of a Marion County Jail inmate disappeared suddenly yesterday after he was seized twice by sheriff's deputies and interrogated by Sheriff Robert H. Fields. 2-1-5-1
>
> Meanwhile, Fields announced late last night that he has suspended two deputies, Donovan L. King and Bud Cottey. 2-1-5-2
>
> Fields said King was suspended for firing a tear gas shell in the jail, but would not give details. 2-1-5-3
>
> The sheriff said Cottey, now vacationing in New Jersey, was suspended for failure to tell his superiors of additional details he knew about the jail inmate's death. 2-1-5-4
>
> Cottey was not the deputy implicated in the key witness' statement about the beating death. 2-1-5-5
>
> Fields said he received a repudiation of the missing man's signed statement that a jail deputy was responsible for the beating, after his deputies grabbed the man and brought him to the sheriff's department before and after he testified before the Grand Jury. 2-1-5-6
>
> The witness, Charles McAdams, 35 years old, said, however, after the meetings in the sheriff's office that he gave no statement. 2-1-5-7
>
> There were these other developments in the probe: 2-1-5-8

1. The grand jury ordered eight deputies and all sheriff's investigators who had talked with the missing prisoner to testify. 2-1-5-9

2. Prosecutor Noble R. Pearcy censured Judge Eugene M. Fife Jr. of Criminal Court, Division 1, for allowing McAdams to go free, and Fife answered the charge. 2-1-5-10

3. New charges of brutality at the jail were bared. 2-1-5-11

4. The Federal Bureau of Investigation was asked to investigate the circumstances surrounding the repudiation of the sworn statement about the beating. 2-1-5-12

McAdams charged in the notarized statement Tuesday that the beating victim, Elmer L. Reagan, 50 years old, who died Aug. 7, had been attacked several times by the deputy, although the beating which led to his death by pneumonia had been blamed on a mental patient. 2-1-6-5

Reagan was beaten July 14, according to the prisoner, and the mental patient, William A. Brown, was arrested on a second-degree murder charge after sheriff's investigators stated Brown beat Reagan when they were locked in the same cell. 2-1-6-5.

McAdams was picked up by sheriff's investigators Tuesday before and after he testified before the grand jury, and released after The Indianapolis Star learned he was being held. 2-1-6-7

He later told The Star deputies stopped him at 4 p.m. and threatened to arrest him if he refused to accompany them downtown. He said he was allowed to drive his own cars while deputies followed. 2-1-6-8

"They hammered me hard with questions for about an hour then took me over to the grand jury and I testified," he said. "When I walked out Deputy Jim Mellene took me back to the jail and I had a long talk with the sheriff and then they took me back and questioned me some more." 2-1-6-9

He said he was "scared to death and nearly sick" and before he was released "one of the deputies pulled a bottle of whisky out of a drawer and said I could have it." 2-1-6-10

It was during the interrogation that McAdams repudiated his statement, Fields said. 2-1-6-11

McAdams agreed to meet with Pearcy yesterday to take a polygraph (lie detector) test but failed to appear and could not be located. 2-7-3-7

Judge Fife authorized issuance of warrants ordering him to be held for the grand jury when located. 2-7-3-8

Pearcy said he saw nothing irregular about Fields questioning McAdams before and after the grand jury testimony and Fields said he considered this within his rights. 2-7-3-9

Although Fields had his own deputies start probing a beating allegedly committed by a jail deputy he called in state police recently to investigate the disappearance of $1,100 from his executive officer's file cabinet. 2-7-3-10

Both Fields and Lt. Robert Edwards, head of the investigation division, said they knew nothing about the witness receiving a bottle of whisky. 2-7-3-11

Pearcy, meantime, said he also intends to order 11 deputies and seven prisoners to testify before the jury. 2-7-3-12

"This is the most unique and singularly important case during my administration," he said. 2-7-3-13

Pearcy said that during the time McAdams' statement was being presented to the jury by Bethel E. Gaither, chief investigator for Coroner Dr. Robert C. Collins, the jury already was reviewing Reagan's death and had heard sworn witnesses testify they had seen Brown attack Reagan. 2-7-4-5

"We have some conflicting testimony," he said. 2-7-4-6

Pearcy censured File for freeing McAdams, stating

that "he could have moved him to some other institution for safety." 2-7-4-7

The prosecutor filed a petition seeking to set aside Fife's ruling which allowed the witness to be freed from jail and Fife ordered the warrants issued for the witness, not because of the petition but because the witness failed to follow his agreement to "keep in touch and be co-operative." 2-7-4-8

Fife scheduled a hearing today and ordered Pearcy, Fields, John L. Davis, grand jury deputy, and Gaither to be present. 2-7-4-9

"This is a peculiar situation," Fife said. "It seems the prosecutor is springing to attack everyone concerned with the gathering of this case instead of considering the evidence as it was gathered and prepared by proper officials and presented to him for action." 2-7-4-10

Fields and Pearcy are close political and social friends. 2-7-4-11

Fife, who had heard the original charge from McAdams personally, said he was convinced the man was telling the truth. 2-7-5-6

The new charges of brutality included a truck driver's statement that he had been attacked by "five or six" deputies when he was jailed last January. 2-7-5-7

It also was learned that an unidentified soldier, who refused to quiet down while held in solitary confinement at the old county jail, was sprayed with a tear gas and beaten within a few days after Reagan was beaten. 2-7-5-8

A spokesman for the FBI said they will start an immediate investigation for any violation of civil rights once McAdams is located. 2-7-6-6

Pearcy said he had not decided whether to ask deputies involved in the investigation to submit to polygraph tests. 2-7-6-7

He also said he did not plan to step out of the probe

because he and Fields were friends. "My friendship with Fields will have no bearing on the outcome of this case," he said. 2-7-6-8

The missing witness was in jail on a charge of violating the Offenses Against Property Act at the time Reagan was beaten. 2-7-6-9

The second front page article in Complaint Exhibit 2 carried a small 8 column headline, "Trucker Charges Brutality In Jail," a one column subheadline, "Declares Deputies Beat Him," and reads as follows:

A truck driver charged last night that "five or six" Marion County sheriff's deputies kicked and beat him while he was a county jail prisoner for four hours last January. 2-1-1-1

One of the deputies threatened to kill him, the truck driver, Arthur L. Derringer, told The Indianapolis Star. 2-1-1-2

Derringer, 46 years old, 115 East 21st Street, said the beating took place in the basement of the old county jail, the same place where another prisoner, Elmer L. Reagan, allegedly was beaten by a deputy in July. 2-1-1-3

The alleged beating of Derringer on Jan. 10 was checked by sheriff's investigators at the time but additional reports on the investigation could not be located last night. 2-1-1-4

Prosecutor Noble R. Pearcy, when told of Derringer's notarized statement, said he would subpena Derringer to appear before the Grand Jury tomorrow. The jury also is investigating Reagan's death. 2-1-1-5

Derringer said shortly after he entered the jail he was told to remove his clothes, and after he did so he was told to bend over and was "kicked in the rear end." 2-1-1-6

He said he did nothing to provoke the deputies.

After he was kicked, Derringer said he fell on his face and another deputy struck him on the jaw with his fist.

Then one deputy told him "We're going to the basement," Derringer said. 2-1-1-7

In the basement Derringer said he was told to stand under a cold shower. Derringer said he takes medication for nerves and high blood pressure and could not stay under the water because it was "ice cold." 2-1-1-8

"I begged them to turn on some warm water but they shoved me back in the shower and called me a son of a b-----" Derringer said. 2-7-1-1

He said he stayed in the shower as long as he could, then stepped out. When he did, one of the deputies struck him behind the ear and "I fell flat on the floor," Derringer said. 2-7-1-2

Derringer said this knocked him unconscious and when he awakened "one of the deputies jumped on my stomach with both feet . . . four of them kicked me before I had time to get up." 2-7-1-3

He said he heard one of the deputies standing in the background telling the others to be careful, but they replied, "Self defense, man." 2-7-1-4

Derringer said one of the deputies told him that if he ever saw him on the street "he was going to kill me."' 2-7-1-5

Derringer said he then was placed in a cell with two other men who warned him he might be killed. The two other prisoners told him he was not the first prisoner they had seen who had been beaten, the truck driver stated. 2-7-1-6

Derringer said he later told his attorney about the incident and the attorney, Gordon Davis, checked into it, but later advised him that "we better forget it." 2-7-1-7

Davis said last night he recalled Derringer telling him about the beating, but he said he would have to check his files to determine if he had talked with the other two prisoners. 2-7-1-8

Davis described Derringer as "honest, conscientious and truthful." 2-7-1-9

Derringer was arrested about 11:30 a.m. Jan. 10 at Lynhurst Drive and West Minnesota Street on charges of public intoxication, operating a motor vehicle while under the influence of liquor, and leaving the scene of a property damage accident. 2-7-1-10

He later was convicted of the operating charge. 2-7-1-11

He said he knew of no reason why the deputies beat him. He suffered an injured lip, bruised jaw and bruises on the body. He said there were heel and foot prints on his tomach for a time, but he did not require any medical treatment. 2-7-2-1

Mrs. Willa D. Beaman, 38 years old, who was with Derringer when he was arrested by deputies and arranged to have him released on bond, complained the time that his wallet was missing when he was freed. 2-7-2-2

She notified the sheriff's department the following day and an investigation was made by Deputy Phillip Cress. 2-7-2-3

In a report, Cress said he telephoned Mrs. Beaman and during the conversation a man's voice interrupted and tried to get Cress to "ease off" the charges filed against Derringer. 2-7-2-4

Cress said in the report he told the man "the charges will stay and that I definitely will not do as you requested." 2-7-2-5

Cress said his shift supervisor, Lt. Alvin C. French, overheard the remark. He also said the man on the telephone offered to give him information on "some robberies" if Cress would drop the charges, but Cress said he refused. 2-7-2-6

Cress said Mrs. Beaman also charged that a deputy shoved Derringer down some stairs and left him in a cold shower, and Cress said he turned these charges over to Sgt. David Margon, the jail shift sergeant when Derringer was arrested. 2-7-2-7

Cress said Morgan told him that any deputies who might be involved in the incident would make supple-

mentary reports. However, no reports could be located last night. 2-7-2-8

Derringer said he knew his statement could result in an appearance before the Grand Jury, but he said "it has to stop somewhere." 2-7-2-9

He said he decided to come forth with his statement after reading about the Reagan case in The Star. 2-7-2-10

"I don't want that to happen to anyone else," he said. 2-7-2-11

He added that although he had been arrested for driving after drinking, he had had only one drink that day and had taken nerve medicine that often causes dizziness, so it may have appeared he was intoxicated. 2-7-2-12

The front page editorial in Complaint Exhibit 2 reads as follows, including headline:

LET'S HAVE

ANSWERS, ACTION!

Nothing but the truth can chase away the giant question mark that hangs today over the Marion County Sheriff's Department—or turn it into a blistering and scandalous indictment. 2-1-7-1

Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history. 2-1-7-2

Suspicion is unavoidable. These charges made by a former prisoner climax a series of irregularities which the sheriff's office has covered up. The past irregularities were brought to light only after long, hard digging by The Star. 2-1-7-3

The newest allegations add up to a sinister story. They were made by a former jail inmate who testi-

fied Tuesday before the Marion County Grand Jury. He said that a deputy sheriff kicked and beat Elmer L. Reagan, a 50-year-old inmate being held in jail on a drunkenness charge, on July 14. By the witness's account, the attack was vicious and sadistic. He said the deputy became enraged when Reagan called him a name after asking for medicine. 2-1-7-4

Regan was taken from the jail to Marion County General Hospital with 12 broken ribs and internal injuries. He died Aug. 7 as a result of pneumonia caused by the injuries, the coroner's office reported. 2-1-7-5

Both the fact that he had been beaten and that he had died were conveniently ignored by the sheriff's office. Only after The Star, upon receiving a tip, investigated, were these facts brought to light. 2-1-7-6

Then the sheriff office came up with the first version of the case, claiming Reagan had been locked in a cell with a 24-year-old mental patient, who had inflicted the fatal beating. This procedure—confining two such inmates in the same cell—in itself seemed highly irregular, as we commented at the time. A sheriff's investigator then charged the mental patient with Reagan's murder, and the charge is still pending. 2-1-7-6

Now the most serious doubt is cast upon this version of the fatal beating. 2-1-7-7

An 11-week investigation by Star Reporter Rick Johnson, based upon a tip from the former prisoner who said he knew what really had happened, led to the ex-inmate's appearance before the grand jury. 2-1-7-8

The witness later made another potentially damning accusation, claiming that sheriff's deputies had tried to intimidate him both before and after his grand jury appearance. 2-1-7-9

This specific charge deserves stern investigation, as to its truth or falsity, for it brings up this question: If the deputies did try to intimidate him, does this not lend credence to the witness's story of the beating? 2-1-7-10

Now Sheriff Robert H. Fields says he has obtained a "repudiation" of the witnesss's original account of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What would induce the witness to change his story? 2-1-7-11

Only a thorough, incisive investigation is going to answer the questions that must be answered. 2-1-7-12

Prosecutor Noble F. Pearcy has said that subpenas will be issued for all persons, including four deputies and several prisoners, named in the witness's statement. Some of the witnesses are out of town and it may be a matter of days before they can be brought here to testify. 2-1-7-13

Meanwhile, Sheriff Fields should waste no time in taking steps to improve jail internal security so that sordid and ugly episodes such as the Reagan beating are impossible. This may require personnel or technical changes or both. But they should be made at once. 2-1-7-14

As for the investigation of the witness's charges, Indianapolis and Marion County are waiting for the answers. And the community will settle for nothing less than the truth. 2-1-7-15

The third article in Complaint Exhibit 2 which appeared on page 7 (but which was referred to on the front page as follows: "Irregularities Common at Jail, Details Page 7) carried a four column headline, "Newspapermen Revealed Irregularities—Sheriff's Office Secrets Not New", and reads as follows:

Irregularities in the Marion County sheriff's department, climaxed with the controversial death of a prisoner, have become almost commonplace during the last year. 2-7-3-1

Most were kept secret from the public until dug out by newspapermen. 2-7-3-2

The list includes: 2-7-3-3

Maj. Alva R. Funk, executive officer to Sheriff Robert H. Fields, withdrew a request on Dec. 18 of last year for free gas and oil from the county for use in a "courtesy car" given him by an auto agency. The plea was canceled after a reporter began checking a tip that Funk had received the vehicle. 2-7-3-4

A rape suspect, under $10,000 bond, escaped from the Marion County Jail by using another prisoner's name and was not apprehended until Aug. 13, two days after he fled. A reporter learned of the escape, which was kept secret, but the chief jailer refused to discuss it until ordered to do so by the sheriff. 2-7-3-5

Robbery loot of $1,100 was found missing from a filing cabinet in the office of Maj. Funk April 28, but disclosure that it was gone was not made until Aug. 13. The sheriff said he ordered a check to be written from the jail commissary fund to repay the money after the firm from which it was stolen obtained a court order for its return. 2-7-4-1

During the sheriff's merit board hearing, which ended Oct. 22 with the firing of sheriff's Sgt. Charles W. Haine, the sheriff declared the alleged bribe given Haine was taken from the same county jail commissary fund. Haine contended he was "framed." 2-7-4-2

The sheriff said the $200 was marked and given Reed Johnson, brother of the alleged extortion victim, Leon Johnson. The money was to be passed on to Haine, according to Fields. 2-7-4-3

Climax to the hectic record came Tuesday with the disclosure that a former Marion County Jail inmate had declared that a county jail prisoner, 50-year-old Elmer L. Reagan, who died Aug. 7 of pneumonia brought on by a vicious beating, had been attacked by an angry deputy sheriff. 2-7-4-4

Meanwhile, even such a minor incident as the two-day suspension of a deputy for breaking into the Beech Grove dog pound to retrieve his dog was kept secret. The incident occurred July 8, but was not revealed until Aug. 18. 2-7-4-5

Exhibit 3 (to Complaint Paragraph 3).

Complaint Exhibit 3 (Tr. 49-50; 2836; SR 39-40; SE 705) is a copy of a front page article and a front page editorial published on October 29, 1965. The article carried a large 8 column headline, "Jail Beating Story Upheld", and a three column subheadline, "McAdams Confided In Her, Woman Says". This article reads as follows:

> The girl friend of Charles P. McAdams told The Indianapolis Star last night that McAdams told her he saw a deputy sheriff beat a prisoner who later died of complications. 3-1-6-1
>
> Miss Lura Kimbley, 52 years old, of Danville, Illinois, also said that McAdams told her last Friday night in a telephone conversation that he had "given a statement on a murder in the Marion County Jail." 3-1-6-2
>
> McAdams, 35, yesterday repudiated his statement that he witnessed a jail deputy beat Elmer L. Reagan on July 14. Reagan died Aug. 7 of pneumonia brought on by 12 broken ribs and other injuries. 3-1-6-3
>
> McAdams testified before the Marion County Grand Jury Tuesday. But both before and after the appearance, he was hustled to the jail for interrogation by deputies. 3-1-6-5
>
> "When he came back from the sheriff's office he was a changed man," Miss Kimbley said, "he was scared. They gave him a bottle of whiskey and he also told me they gave him drinks while they were questioning him. 3-1-6-6
>
> "They brainwashed him and he sold out." Miss Kimbley said, "And it's not right. I'll testify as to what he told me. I want no part of deals like this. If I'm going to be ruled by fear I'll take my chances." 3-1-6-6
>
> She said she believes McAdams definitely was telling the truth when he said he had seen a murder in the jail. 3-1-6-7

McAdams gave a statement to chief coroner's investigator Bethel E. Gaither and Rick Johnson, reporter for The Star, last Friday in which he said he saw Reagan beaten repeatedly by the deputy. 3-1-6-8

Although McAdams repudiated the statement, the sheriff's department took action on one incident reported in the statement. 3-1-6-9

McAdams described use by a deputy of tear gas in quelling a disturbance started in the jail by a soldier. Last night Maj. Alva R. Funk, the sheriff's executive officer, said Deputy Donovan L. King was suspended with pay Wednesday as a result of the tear gas incident. 3-1-6-10

King used a pencil-type tear gas gun to quiet the soldier being held in the old jail on a charge of being drunk, Funk said. The soldier was released to military authorities. 3-1-6-11

An investigation was made by the jail division, Funk reported, and no action was taken against King at the time because it was a "division" matter. 3-1-6-12

The sheriff last night declared that "the suspensions of King and Cottey are not punishment suspensions." Fields declared the two were suspended pending an investigation of the accusations made against them. 3-1-7-3

The beating which brought on the pneumonia which resulted in Reagan's death was blamed by the sheriff's office on a mental patient who shared a cell with Reagan. 3-1-7-4

McAdams repudiated the confession yesterday when he appeared before Judge Eugene M. Fife Jr. in Criminal Court, Division 1. McAdams was picked up in Danville, Ill., early yesterday morning after Fife authorized a warrant for McAdams because he had broken his word to keep in touch. 3-14-5-1

The girl friend said McAdams called one of her relatives in Indianapolis yesterday after his appearance before Judge Fife and told her to tell Miss

Kimbley, "Don't speak to Johnson and don't talk to anyone until you talk to me." 3-14-5-2

Judge Fife sent McAdams back to the jail to finish out a 180-day sentence for violation of the Offense Against Property Act. 3-14-5-3

In yesterday's hearing, Fife blasted Prosecutor Noble R. Pearcy for his handling of the case. The judge asked Pearcy if, in view of the close personal relationship between the prosecutor and Sheriff Robert H. Fields, he would rather step aside in the case. 3-14-5-4

"Absolutely not," Pearcy answered. 3-14-5-5

Fife asked Pearcy, "Are you serious in going forward in this case?" And Pearcy replied, "Yes." 3-14-5-6

"Then," Fife said, "I want the record to show that all concerned in this case are interested in getting to the bottom of this case." 3-14-5-7

Fife then put McAdams on the stand and began questioning him regarding an oral statement made last Thursday and the written statement made last Friday. 3-14-5-8

McAdams admitted making the statements but added quickly, "I didn't raise my hand, I didn't swear and there wasn't no seal on it." 3-14-5-9

Fife said, "Well, I can see I made a mistake. Your sentence is hereby reinstated and you'll serve your term in jail." 3-14-5-10

Fife said later, "When he started that jail house lawyer 'weaseling' it was evident he had been expertly coached." 3-14-5-11

Fife then launched an attack on the prosecutor saying: "We have a free man who indicated he would co-operate with the proper authorities and he did so until he was released from jail. Something has happened." 3-14-5-12

"I tried to send you a new witness," Fife told Pearcy, "and I get a blast from you. I'm getting

a little tired of being blasted just because I refuse to be a rubber stamp for the prosecutor." 3-14-5-13

Fife then turned his remarks toward the grand jury which was present. 3-14-5-14

"I'd also like to remind you that the grand jury is an independent body and not an adjunct of the prosecutor's office. They are still considering this case and I want to make no decisions today which would affect the outcome of their deliberation," he said. 3-14-6-1

Gaither said that Coroner Dr. Robert C. Collins has taken a personal interest in this case and is probing the beating death with his informants. 3-14-6-2

"So far, everything we've turned over to the grand jury might as well have been poured out in the hall," Gaither said. "I believe McAdams told the truth in his statement to me but I think he's lying now and he has been expertly coached. He's been told what to say, how to say it and he's lying. 3-14-6-3

"But," Gaither added, "there is a mess in that jail and sooner or later it will come out. Trying to cover it up will be like trying to sweep an elephant under the rug." 3-14-6-4

Fife and Gaither agreed that the entire incident is an outrage to the community. 3-14-6-5

McAdams and Boon Wise, a former prisoner at the jail, testified before the grand jury in the morning. Witnesses questioned in the afternoon were Star reporter Johnson, Gaither, William McMasters, the lawyer who notarized McAdams' statement, and Raymond (Pat) Patterson, one of Fife's bailiffs who witnessed the notarization. 3-14-6-6

Nearly 10 deputy sheriff's were on hand to testify but the day ended before they could be called. They have been ordered to reappear today, Pearcy said. 3-14-6-7

In statements after his hearing before Fife, McAdams told an interviewer why he retracted his statement. 3-14-6-8

"I wanted the truth to come out about this man, Rick Johnson; he's a dangerous man . . . He seems to be trying for a political pull in this town." 3-14-6-9

The interviewer said, "There have been rumors that he (Johnson) might be interested in being the sheriff himself someday. Is this true?" 3-14-6-10

McAdams answered, "Could be. Could be. I just wanted it to come out about him so that people would know." 3-14-6-11

He told another interviewer that his motive for repudiating his statement was "To get released . . . just to get released, and uncover Rick Johnson . . . he was always hanging around me . . . I was scared of him . . . everytime I looked around Rick Johnson was there. 3-14-6-12

(Johnson did not meet McAdams until last week when McAdams asked to meet him about information he had concerning the Reagan death.) 3-14-7-1

McAdams also said that Johnson did not tell him to lie. 3-14-7-2

In answer to a question about whether he would rather be outside, McAdams said: 3-14-7-3

"No, there is no other place I would rather be than in the security of the jail." 3-14-7-4

McAdams also was asked if in view of having given contradictory statements, he was "fearful of the consequences." 3-14-7-5

McAdams hesitated, looked around and said, "I have protection." 3-14-7-6

Pearcy said it would be up to the grand jury to decide whether or not to press perjury charges against McAdams for making a false statement. 3-14-7-7

Meanwhile, a hospital worker yesterday said she saw the injuries which an Indianapolis truck driver has charged were inflicted on him by "five or six" deputy sheriffs in the basement of the jail last January. 3-14-7-8

Mrs. Willa D. Beaman, 38, said she was dating the

trucker, Arthur Leo Derringer, 46, 115 East 21st Street, last January and was with him when he was arrested and when he was released four hours later at the jail. 3-14-7-9

Mr. Beaman, who since has married, said Derringer had no injuries when he was led away to be jailed by deputies, but that when he was released and walked from the door of the jail she said she noticed he had suffered a split lip. 3-14-7-10

Later, she said Derringer showed her bruises on his stomach and a heel imprint on his stomach which Mrs. Beaman said "stayed four or five days." She said injury showed "clearly" the imprint of a heel of a shoe. 3-14-7-11

Derringer, however, told Mrs. Beaman he had been "shoved down a stairway and left beneath a cold shower for a long time." 3-14-7-12

The trucker is scheduled to appear before the Marion County grand jury today to give details of the alleged beating. 3-14-7-13

The front page editorial in Complaint Exhibit 3 reads as follows, including headline:

SOME MORE QUESTIONS.

It seems odd to us that Prosecutor Noble Pearcy should see nothing wrong in the fact that deputies from the sheriff's office and the sheriff himself should call a chief witness, who had appeared before the grand jury for interrogation, and get a retraction of his grand jury testimony from him. 3-1-7-6

After all, it is the sheriff's office that is accused of wrongdoing. If every accused wrongdoer had the opportunity to interrogate his accused as was done in this case, you sure wouldn't have many willing grand jury witnesses for any case. It is, to say the least irregular to permit the accused to cross examine the accuser outside of the court, particularly when he has the power of the sheriff's office behind him. 3-1-7-7

Another question: If the sheriff and his deputies had nothing to fear from a grand jury investigation, if they know that they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence? 3-1-7-8

It makes you wonder, doesn't it? 3-1-7-9

Exhibit 4 (to Complaint Paragraph 4).

Complaint Exhibit 4 (Tr. 51-52; 5255; SR 41-42; SE 714) is a copy of a front page article published on October 30, 1965. It carried a large 8 column headline, "Witnesses Get Protection", a four column sub-headline, "Woman's Fear In Beating Case Stirs Judge, Grand Jury Action", and reads as follows:

An airtight curtain of protection was guaranteed yesterday to all witnesses, past or future, who testify regarding alleged beating of prisoners in the Marion County Jail. 4-1-5-1

The Marion County Grand Jury and Judge Eugene M. Fife, Jr., Criminal Court, Division 1, moved to protect all witnesses when Mrs. Lura Kimbley, 53 years old, Danville, Ill., said she was afraid deputy sheriffs would grab her and treat her the same way they had her boy friend, Charles P. McAdams, 35. 4-1-5-2

Before Mrs. Kimbley testified yesterday in the grand jury, Fife and the jury provided protection for her and offered the same protection to any other witness who wishes to testify. 4-1-5-3

McAdams first made a notarized statement that he saw a deputy sheriff beat Elmer L. Reagan, 50, who later died of pneumonia brought on by 12 broken ribs and other injuries. 4-1-5-4

But McAdams was hustled to the jail for interrogation by deputies both before and after his grand jury appearance Tuesday. He then repudiated his previous statement. 4-1-5-5

Mrs. Kimberly said that McAdams previously had told her of seeing Reagan beaten by the deputy. She also said that McAdams told her last Friday in a telephone conversation that he had "given a statement on a murder in the Marion County Jail." 4-1-5-6

Fife ordered Mrs. Kimberly to be escorted to and from the grand jury by his bailiff. The grand jurors responded by declaring Mrs. Kimbley a continuing witness and thereby placing her under the protective custody of the court and the grand jury. 4-1-6-2

"At no time is this woman to be contacted or questioned by anyone," Fife ordered, "if it is necessary for any member of the sheriff's office to question her, it will be done in my presence only." 4-1-6-3

"And woe be to anyone who tampers with someone under the protection of this court and the grand jury," Fife warned. 4-1-6-4

Another witness before the grand jury yesterday was Arthur Leo Derringer, 46, Indianapolis truck driver who testified about a beating he said he received in the jail nine months ago. 4-1-6-5

Derringer challenged the "five or six" deputies he said beat him to take public or private lie detector tests to clear up the incident. 4-1-6-6

Meanwhile, it was learned that all available information gathered by the Federal Bureau of Investigation, regarding a possible violation of McAdams' civil rights in his questioning by sheriff's deputies, has been forwarded to Washington, D. C., for further investigation. 4-1-6-7

McAdams in his statement Friday said that a deputy sheriff, and not a mental patient had beaten Reagan on July 14. 4-1-6-8

Mrs. Kimberly said McAdams told her, after his release from sheriff's investigators, that he had been

given drinks of whiskey during his questioning by deputy sheriff's, and was given nearly a fifth of whisky when he left the office. 4-1-6-9

McAdams' girl friend said prior to his pickup by deputies Tuesday afternoon, that McAdams was free and happy and told her he had seen a deputy murder a man in the jail, identifying both the assailant and the victim. 4-17-1-1

"But he'd say and do anything when he's on whisky," she said. And then she added, "I won't change my story no matter what happens but I can see why Charles did if they treated him while questioning him like they did when he was picked up early Thursday morning." 4-17-1-2

Mrs. Kimberly said she was awakened by a knock on her door at 4:30 a.m. Thursday—and when McAdams got up to answer it, a policeman burst through the back door of her trailer as another policeman entered the front door. 4-17-1-3

She said they jostled McAdams around after placing him under arrest, and put handcuffs on him . . . "It was cold and they wouldn't even let me give him a coat. I asked him what the deal was and he told me he didn't know. I was afraid they'd kill him and then I got to thinking if Charles told them he had confided in me, that they might come after me. Then I got scared," she said. 4-17-1-4

For her safety, Mrs. Kimbley was brought to Indianapolis Thursday night and taken to Judge Fife early yesterday morning. 4-17-1-5

Mrs. Kimberley told Judge Fife that she was sure McAdams had told the truth when he said he saw a deputy sheriff beat a man to death. 4-17-1-6

"He was all right until they (the sheriff's department) got him. Then they brainwashed him, fed him whisky and told him what to say. When he sobered up he knew he'd done wrong and he was sorry. They knew his weakness and they used it," she said. 4-17-1-7

Sheriff Robert H. Fields said McAdams "voluntarily" accompanied two deputies and a cameraman from Danville, Ill., Thursday morning. Earlier, the sheriff also said he knew nothing about McAdams being given any whisky during his questioning. 4-17-1-8

Asked whether he thought questioning of McAdams by the sheriff's department was improper, Prosecutor Noble R. Pearcy said, "No. I think any sheriff would be derelict in his duty not to question the accuser." 4-17-1-9

"Both the police and sheriff's deputies conduct investigations in any alleged crime," he added. McAdams had accused only three deputies, not the whole sheriff's department, Pearcy said. 4-17-1-10

Fields said McAdams repudiated the statement he gave The Star during questioning after his grand jury testimony Tuesday. Pearcy declined to say when McAdams repudiated his statement. 4-17-1-11

Both his girl friend and former cellmate said they had heard him say he saw a deputy beat a prisoner who later died. 4-17-1-12

A parolee told The Star Thursday night that he entered the Marion County Jail in July, and although he didn't witness the beating, he heard conversations between McAdams and the cell boss, in which McAdams told a story almost identical to the statement he gave chief coroner's office investigator Bethel E. Gaither. 4-17-1-13

The parolee said he would like to testify about the beating and other incidents of brutality in the jail, but he feared reprisal by deputies if he ever went to jail again. 4-17-1-14

"If they ever found out I was talking it wouldn't be safe for me to walk the street," the parolee said. He added, "There are a lot of guys who could tell plenty if they weren't so scared. Keep going—you haven't even scratched the surface." 4-17-1-15

The parolee also said, "I know McAdams. He would

never have broken if he hadn't been forced. He just wasn't that way." 4-17-2-1

The grand jury heard testimony from 16 persons yesterday. Questioned were: Sheriff's Lt. Walter (Smokey) Davis—concerning a call from a deputy that tear gas was shot in a cell in the county jail; Deputies Michael Smilko and Roscoe E. Kennedy—alleged knowledge of the beating of Reagan; Sgt. Robert M. Smith—investigation of a charge that a mental patient kicked Reagan on July 14; Sgt. James Mellene—concerning taking McAdams to and from the grand jury hearing on Tuesday; Deputy Jack Churchill—concerning alleged treatment of Reagan for open sores; Gordon Davis—attorney for Derringer when he was arrested and allegedly beaten, and Mr. and Mrs. Lee Bowling—concerning picking up of McAdams at their home by sheriff deputies Tuesday.

Others appearing were: Deputies David Warholak and Willard Mosley, Sheriff's Sgt. Richard Warum and State Trooper Kenneth Houck. 4-17-1-2

Derringer said he was kicked and beaten by deputies during a four-hour stay at the old jail Jan. 10 after he was arrested on a charge of operating a motor vehicle while under the influence of liquor. 4-17-2-3

Derringer said he had "everything to lose but my conscience to maintain" in testifying about the case. 4-17-2-4

The trucker told reporters outside the grand jury room that his attorney, Gordon Davis, had conducted an investigation of the alleged brutality and later told Derringer it would be "best to drop it." 4-17-2-5

Davis was called to testify before the jury shortly after Derringer's appearance. 4-17-2-6

Sheriff's executive officer Maj. Alva Funk said reports were submitted by deputies stating that Derringer had twisted the arm of a deputy. Funk said he was not familiar with the reports and could not relate details. 4-17-2-7

The reports, written in longhand, were found last

night by an Indianapolis Star reporter in the central record file at the sheriff's office. 4-17-2-8

The same files had been checked Wednesday night when Derringer made his accusation to The Star but the supplementary reports by the deputies were not found at that time. 4-17-2-9

Funk explained that by saying that the deputies' accounts of the beating had been placed in "personnel files" and were not "public case reports." 4-17-2-10

The reports by shift Sgt. David R. Morgan and six other deputies accused Derringer of becoming "abusive" and of twisting Morgan's arm. Morgan since has resigned from the department. 4-17-2-11

Exhibit 5 (to Complaint Paragraph 5).

Complaint Exhibit 5 (Tr. 53; 4435; SR 43; SE/572) a copy of a front-page article published on October 31, 1965, with a large 8-column headline, "Prisoners Tell Of Beating," a three-column sub-headline, "County Jail Incidents Revealed 1 Year Later," and reads as follows:

Pendleton, Ind.—An Indiana State Reformatory prisoner said in a signed statement yesterday that he was beaten severely by a deputy sheriff at the Marion County Jail a year ago. 5-1-6-1

Three other prisoners signed statements saying they witnessed the beating of James P. Dearing, 23 years old, 1205 Polk Street, Indianapolis.

One of the trio also said he witnessed the beating of Arthur Leo Derringer, Indianapolis truck driver, which already is under investigation by the Marion County Grand Jury. 5-1-6-2

Dearing, who is serving two concurrent 10-year terms for armed robbery, said he was beaten in the "Federal Cell Block" of the old Marion County Jail for his part in a jail riot, which occurred Oct. 11, 1964. 5-1-6-3

The statements made by all four of the reformatory

inmates were given in the presence of James W. Buck, superintendent of the reformatory. They will be turned over to the Marion County Grand Jury tomorrow. 5-1-6-4

All four inmates said they are willing and eager to testify before the grand jury about alleged brutality in the Marion County Jail. 5-1-6-5

All four said they would be willing to take lie detector tests to demonstrate the truth of their statements. 5-1-6-6

The three inmates who said they saw Dearing beaten are Henry L. (Hank) Reuter, 26, 501 St. Paul Street, William Dean Anthony, 1029 East Ohio Street, and Rodney McLean, 22, 523 East Warsaw Street, all of Indianapolis. 5-1-6-7

Reuter said he was a cellmate of Derringer and saw the truck driver beaten by "two or three deputies." 5-1-6-8

Dearing, who has a long police record and is an admitted hold-up artist, said a sergeant in the sheriff's department "beat me with his fists from the shoulder up" after the riot. Prisoners had flooded the floor by causing toilets to overflow and set mattresses afire by piling them on a range. 5-1-7-2

Dearing said he was unable to count how many times he was hit. 5-1-7-3

"Quite a few times, though," he said, "enough that he couldn't take me to court when I was supposed to go." 5-1-7-4

He said the sergeant accused him of being one of the two people who incited the riot. Dearing denied that but admitted "I did my part" in it. 5-1-7-5

He said the sergeant finally knocked him down into the water which was flooding the floor. 5-1-7-6

Dearing said that as a result of the beating, he had a "ringing" in his right ear for a long time, his face was swollen, his right eye blacked and his neck swollen. 5-1-7-2

Dearing said that after the beating, he was put in "the hole," a big steel cage with no toilet facilities, and left there for five days. He said he was served only two meals during the five days. 5-12-1-1

Dearing also said he had seen many drunks beaten by deputies. The reformatory inmate said that prisoners with delirium tremens are given no consideration by deputies and when deputies are informed jail prisoners are in such a condition, they merely say "shove them back into the corner." 5-12-1-2

Dearing also recounted an episode in which he said he was beaten by an Indianapolis policeman and knocked down "five or six times" when he gave "John Doe" instead of his real name when arrested. 5-12-1-3

Reuter said that he saw deputies hit Derringer on the kidneys and slap him in the face and that Derringer then was taken down to the basement of the jail. 5-12-2-1

After that, Reuter said, he heard a lot of yelling and noises coming from the basement. 5-12-2-2

All four of the inmates said that it was generally understood at the jail when a prisoner was taken "down to the basement," it meant he was going to be beaten. 5-12-2-3

"Have you seen other prisoners beaten at the Marion County Jail?" Reuter was asked. 5-12-2-4

"I have and will swear to it," he said. "I have seen at least 10 prisoners beaten at the jail. I saw three in one night." 5-12-2-5

Reuter then was asked why the deputies beat the prisoners. 5-12-2-6

"If you want my opinion," he said, "I think they're a bunch of sadistic ..... s." 5-12-2-7

Reuter said that he saw Dearing beaten by the sergeant for "four or five minutes." 5-12-3-1

At the time of the riot, deputies blamed Dearing, Reuter and another prisoner for being responsible for it. Deputies said the three contended their television privileges had been unduly denied. 5-12-3-2

Anthony said he had personally seen four different prisoners beaten in the jail. They were Dearing, a Bobby Wright and the Blake brothers, Charles and Walter, he said. He said all were beaten the night of the riot. 5-12-3-3

McLean said that before the sergeant started beating on Dearing the deputy shouted repeatedly, "I'm going to kill you . . . I'm going to kill you." 5-12-3-4

McLean also said he saw a mental patient beaten while the patient was in "the hole." He named the deputy who did the beating, but did not know the name of the patient. 5-12-4-1

The statements by the prisoners were the latest chapter in the mushrooming story of apparent brutality in the jail which has been unfolding since The Indianapolis Star started an investigation into the death of Elmer L. Reagan. 5-12-4-2

Noble R. Pearcy, Marion County prosecutor, said yesterday that "several witnesses" have been summoned to testify tomorrow when the grand jury resumes its investigation. 5-12-4-3

The jury probably will spend most of the morning conferring about the information given by 17 witnesses who testified Friday, Pearcy said. 5-12-4-4

Exhibit 6 (to Complaint Paragraph 6).

Complaint Exhibit 6 (Tr. 54; 4208; SR 44; SE 530; 731) is a copy of a front page article published on November 1, 1965, with a large 8 column headline, "More Jail Beatings Told", a two column sub-headline, "Inmate Charges Mistreatment Of Prisoners", and reads as follows:

A prisoner at the Indiana State Penal Farm at Putnamville yesterday charged two men were beaten by sheriff's deputies while he was an inmate at the Marion County Jail. 6-1-7-1

Another former jail inmate also charged deputies mistreated prisoners, including one case where an

inmate, forced to sit naked on a soggy mattress, was jabbed continuously by a deputy with a wooden stick. 6-1-7-2

The statements by the penal farm prisoner, James Hiram Daniels Jr., and the other former inmate, Charles E. Hembree, were the latest in the burgeoning investigation of alleged brutality at the jail. 6-1-7-3

Daniels, 21 years old, Indianapolis, made his statement in the presence of D. L. Hudkins, assistant superintendent of the penal farm, and said he was willing to testify before the Marion County Grand Jury. 6-1-7-4

The jury has been investigating jail brutality since The Indianapolis Star revealed last week that one inmate, Elmer L. Reagan, who died in Marion County General Hospital of pneumonia caused by a beating, allegedly was attacked by a deputy. 6-1-7-5

Hembree, 33, 1232 East Bradbury Street, signed a notarized statement and also agreed to testify before the jury. 6-1-7-6

Both statements will be given to the jury today along with statements from five prisoners at the Indiana State Reformatory who said they witnessed beating at the jail. 6-1-7-7

Daniels, serving a 1-year term for first-degree burglary, said he saw two sheriff's sergeants beat two prisoners. 6-1-7-8

In one of the beatings a sergeant fired a tear-gas pistol into a maximum security cell.

The latter incident occurred in late July or early August and was witnessed by five deputies, Daniels said. 6-1-7-9

Daniels said the tear gas pistol was fired at a soldier who had been held in solitary confinement for several days. He said the prisoner had been pounding on his cell door and asked the sergeant for medicine. 6-1-8-3

Daniels said the sergeant told the prisoner there was no medicine, and then left. The prisoner started

pounding on the door again, and the sergeant returned and fired the pistol into the cell. 6-1-8-4

When the prisoner did not stop pounding, the sergeant returned, "took him out of the hole, took him out in front of the cell blocks on the main floor and hit him in the face several times," Daniels said. He identified both the sergeant and prisoner. 6-15-2-1

Sheriff [redacted]ert H. Fields suspended Sgt. Donovan King last [redacted]k, for firing a tear gas gun in a cell, but would not give details. 6-15-2-2

Daniels also said other deputies beat another prisoner, another sergeant struck a new inmate who was intoxicated, and other inmates, mostly drunks, were mistreated by deputies. 6-15-2-3

Daniels who has been arrested several times, also stated that a man now serving a term at the Indiana State Reformatory at Pendleton was struck on the head several times while Daniels was a jail inmate and then evidently tossed down a flight of stairs. 6-15-2-4

"I saw when they brought him up and his face was swelling and red," Daniels said. 6-15-2-5

He also said in the statement inmates often were held with handcuffs so tight their wrists swelled and "you couldn't see the cuffs." 6-15-2-6

He said he once was kept in a cell with a mental patient for a week, and he and seven other inmates were held in cells in the new jail—before it was opened—and were left alone there for four or five days except when a deputy brought their meals. 6-15-3-1

Daniels was a jail inmate from Jan. 9 to Sept. 9. 6-15-3-2

Hembree, a veteran of the Korean War, said, "I served one year in Korea and I'd rather do that again than spend one day in the Marion County Jail." 6-15-3-3

Hembree said he was held in the jail four times, all for traffic violations. The incident where the inmate

was jabbed with the stick occurred in 1959, he said. 6-15-3-4

He said he believed the deputy poked the man because the inmate would not keep quiet. "He was talking and kind of made the deputy mad," Hembree said. 6-15-3-5

Hembree said he did not know if the prisoner was injured because he was taken away to be processed. He said "other prisoners in my cell said that it took three guards to work on him, but I don't know what that meant." 6-15-3-6

One time in 1959 other prisoners beat an inmate while deputies stood by watching, Hembree said. 6-15-3-7

The prisoner had refused to eat so three prisoners put him against a wall and slapped and kicked him while the deputies watched, Hembree said. 6-15-3-8

Hembree said he never was mistreated. Asked who was, he said, "Anybody who said anything out of line. If you kept your mouth shut, you kept out of trouble." 6-15-3-9

He described conditions at the jail as "unbelievable." 6-15-3-10

The Grand Jury also has heard charges from a truck driver that deputies beat him when he was a jail prisoner. 6-15-3-11

All persons who testify in the case have been promised protection by the jury and by Judge Eugene M. Fife, Jr. of Marion Criminal Court, Division 1. 6-15-3-12

Exhibit 7 (to Complaint Paragraph 7).

Complaint Exhibit 7 (Tr. 55; 4198; SR 45; SE 519) is a copy of a front page article published on November 2, 1965, with a large 8 column headline, "Witness Protection Gains", and a two column sub-headline "Rabb Promises Safety; 2 More Charge Beatings". The article reads as follows:

> Protection for witnesses who testify before the Marion County Grand Jury in the steamrolling investigation of brutality at the Marion County Jail was promised by a second Criminal Court judge yesterday. 7-1-7-1
>
> Meanwhile, two more former jail inmates charged that they were beaten by deputies and a third complained he had been mistreated and threatened at the jail. 7-1-7-2
>
> Judge Saul I. Rabb of Criminal Court, Division 2, joined Judge Eugene M. Fife, Jr. of Division 1 in offering protection for jury witnesses. 7-1-7-3
>
> Rabb and Fife said all persons who testify would become 'continuing witnesses" and thereby placed under the protection of both criminal courts and the grand jury. 7-1-7-4
>
> Fife ordered last week that jury witnesses were not to be bothered or questioned before or after their testimony, and questioning of any witnesses by sheriff's personnel was to be done in his presence. 7-1-7-5
>
> Rabb concurred with Fife and added that questioning of witness outside the jury room would take place only while he was present or in the presence of his court reporter. 7-1-8-4
>
> However, since any grand jury indictments would be returned to his court, Rabb said he did not want to prejudice himself by hearing any of the evidence. 7-1-8-5
>
> Persons found guilty of tampering or intimidating

witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted. 7-1-8-6

The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared before the grand jury. 7-1-8-7

The witness, Charles P. McAdams, 35 years old, had signed a notarized statement accusing a sheriff's sergeant of the fatal beating of an inmate, but according to Fields, repudiated the statement during the questioning by Fields and deputies. 7-1-8-8

The mistreatment charge disclosed yesterday came from a convict serving a 25-year term for bank robbery who will be returned to Indianapolis to stand trial in Federal Court for the November, 1963 robbery of a savings and loan firm. 7-1-8-9

Attorney William C. Erbecker, who is defending the prisoner, Harold Kaufman, 42, filed a writ of habeas corpus requesting that Kaufman not be brought back to the Marion County Jail for either the writ hearing or the trial. 7-1-8-10

"Kaufman fears for his safety in the jail," Erbecker said. "He's a hardened criminal but he can't take that place." 7-1-8-11

Erbecker said he and Kaufman were willing to testify before the grand jury to disclose how Kaufman was mistreated. 7-10-3-1

The beating charges were made by Denzil Loren Neville, Jr., serving a one-year term at the Indiana State Penal Farm at Putnamville for vehicle theft, and Jimmy Harold Green, 17, serving a 10-to 25 year term at the Indiana State Reformatory at Pendleton for robbery. 7-10-3-2

Neville gave a notarized statement in the presence of D. L. Hudkins, assistant superintendent of the farm, charging that his nose was broken during a beating and he was held without food in the jail "hole"—solitary confinement—for three days. 7-10-3-3

Neville, 22, said he was struck "in the stomach" by a tall sheriff's sergeant when he refused to take a cold shower. 7-10-3-4

"I was about half drunk and the water was cold and I wouldn't stay under it," he stated. 7-10-3-5

All incoming prisoners are required to take showers at the jail as a sanitary precaution. 7-10-3-6

"The sergeant said I was calling him vulgar names. I don't remember calling him names but he said I was and he hit me in the stomach and in the nose." 7-10-3-7

"He broke my nose. They didn't never take me to the hospital, but look at my nose, it's all out of shape." 7-10-3-8

Neville, who has a long criminal record dating back to 1961, said he was put in the "hole" for three days and was not given food. Another inmate managed to bring him "some bread" to eat, he stated. 7-10-3-9

He said that marks on his wrist which still are visible are the result of handcuffs being placed on him too tightly when he was in solitary confinement. 7-10-4-1

He did not know the name of the sergeant who struck him, but said he could identify him. Another inmate, however, provided the sergeant's name. 7-10-4-2

Neville also recalled seeing an old man pushed against a wall and knocked unconscious last July. He said he had heard that the man died later. 7-10-4-3

The prisoner also said he was stripped to his undershorts and struck by a deputy when he was arrested in August for car theft. 7-10-4-4

He said he decided to give the statement because "I believe it's about time they put someone on the sheriff's department who would treat the prisoners a little better." He agreed to testify before the grand jury if called. 7-10-4-5

Green signed a notarized statement in the presence of R. I. Hinkle, director of the identification section at the reformatory. 7-10-4-6

Green, who first was arrested when he was 14, said he was drunk or nearly drunk" when he was brought to the jail June 9 and was "slapped" on the head. 7-10-4-7.

Green said he began arguing with the deputy and a sergeant stepped in. Green said the sergeant told two other deputies to "take me downstairs and give me a shower." 7-10-4-8.

At the top of the staircase leading to the basement the deputies began beating him and the next thing he remembered was waking up at the bottom of the stairs with a deputy "kicking me," Green said. 7-10-4-4

He said two deputies then picked him up and beat him "all the way to the shower and then threw me in the shower . . . One would hold me while the other hit me," he said. 7-10-5-1

He named the two deputies he accused and said he would testify before the jury if asked. 7-10-5-2

"I thought I was beaten up for no reason at all," he said. 7-10-5-2

The jury heard testimony from 14 witnesses yesterday. Observed in the jury waiting room were David R. Bland, deputies, John Moore, Ralph Leibrandt, Ed Owens, James Burris, Robert Kirkham, Joseph Johnson and Sgt. Felson Bowman, and Ronnie Wise, a deputy in Vermillion County, Illinois. 7-10-5-3

Others who testified were former deputy David Morgan, Bennie L. Peak, and the two jail chaplains, the Rev. Harrison Neal of Irvington Presbyterian Church and the Rev. Jack Burrell of Faith United Presbyterian Church. 7-10-5-4

Because the jail probe continues to grow, Deputy Prosecutor James E. Bath informed Rabb and Fife yesterday that the jury would not return its regular report today. 7-10-5-5

Exhibit 8 (to Complaint Paragraph 8).

Complaint Exhibit 8 (Tr. 56-57; 5257; SR 46-47; SE 739) is a copy of two front page articles which published on November 3, 1965. One carried a large 8 column headline, "100 To Testify About Jail", a two column sub-headline, "Ex Inmate Terms Conditions Bad As In POW Camp", and reads as follows:

> Eighteen persons testified yesterday in the Marion County Grand Jury investigation of brutality at the county jail, and 35 more bringing the total to about 100 are expected to testify before the probe ends. 8-1-7-1
>
> There were these other developments in the mushrooming jail probe: 8-1-8-2
>
> 1. A 35-year-old Indianapolis facory worker stated that deputies beat a prisoner while he was a jail inmate in September, and said deputies did not intervene when inmates were beaten by other inmates. 8-1-8-3
>
> 2. A former sheriff's deputy, describing jail conditions as "almost medieval," delivered a scorching criticism of the jail operation. 8-1-8-4
>
> 3. Deputies have picked up several former jail inmates and obtained statements from them that there have been no jail beatings and overall condition of the jail is good, a reliable source said. 8-1-8-5
>
> 4. Calvin B. Howard, local agent in charge of the Federal Bureau of Investigation, said a request to check possible civil rights violations at the jail has been turned over to the FBI's civil rights division. 8-1-8-6.
>
> The factory worker, James M. Byers, 1102 East Naomi Street, who spent nearly three years in a Chinese prisoner of war camp during the Korean War, said he had "never seen a fellow American being treated worse than the inmates at that jail." 8-1-8-7

James E. Bath, deputy prosecutor in charge of the grand jury, said the jury will not meet today but will resume the probe tomorrow and plans to hear testimony from at least two jail inmates and four other persons. 8-1-8-8.

Since the jury investigation started, following a report by The Indianapolis Star on the fatal beating of inmate Elmer L. Reagan, 11 former inmates have told of brutality at the jail. 8-1-8-9

Byers said in a signed statement he was arrested near his home Sept. 8 on a charge of drunkenness and was in the jail six days before he was released on bond. The charge later was dismissed. 8-1-8-10

The father of three children, he said he saw an inmate named Davis being beaten by "I don't know how many deputies." 8-18-3-1

Byers also said while he was there a number of juveniles were being held in the jail, and one boy, 14, whom Byers later talked with, was beaten by other inmates. Other juveniles also were beaten by inmates, Byers said. 8-18-3-2

Byers said he was in a cellblock, designed to hold 27 men, with 41 other inmates. 8-18-3-3

"The kids couldn't defend theirselves and the deputies didn't make no rounds to check the cellblock," he said. 8-18-3-4

Byers, who said he is a disabled veteran, described the cellblock as filthy. He said debris was piled in an aisleway for six days. 8-18-3-5

Byers, who said he spent 35 months in a POW camp in Korea, agreed to testify before the jury if called. 8-18-3-6

The jury probe started after The Star obtained a signed statement from an inmate, Charles P. McAdams, charging a jail sergeant with the fatal beating of Reagan on July 14. 8-18-3-7

Sheriff Robert H. Fields said McAdams later repudiated the statement during questioning by the sheriff and deputies, but McAdams' girl friend, Mrs.

Lura Kimbley, said McAdams told her he was given whisky during the interrogation. 8-18-3-8

Eleven prisoners, five deputies and four civilians were called by the jury yesterday, but two prisoners, James P. Marshall and Forest Stalnaker, did not testify. 8-18-3-9

The prisoners who testified were Otis Maier, James Dearing, Stanley Wethington, Menlow John Short, Otto Dearing, James H. Daniels, Henry Reuter, Rodney McLean and Billy Dean Anthony. 8-18-3-10

The deputies were George Tow, Floyd Grundon, James Allen and Arthur Cottey. The civilian witnesses were George Cox; Juanita Spicer, Dixie Atkins and James Cavanaugh. 8-18-3-11

Cottey has been suspended by Fields for allegedly withholding information about the beating of Reagan. Another deputy, Sgt. Donovan King has been suspended for firing a tear gas shell into a cell. 8-18-3-12

The former deputy asked that he not be identified, but said he was willing to testify before the grand jury. He worked at the old jail, where Reagan was beaten, and which was closed several months ago. 8-18-3-13

"The majority of the men who work in the jail have absolutely no training and even less patience in dealing with prisoners," he stated. "There are an awfully lot of drunks slapped and knocked around, and for no other reason than the deputy lost his patience." 8-18-3-14

The ex-deputy said he resigned from the department for personal reasons and "because I couldn't take it any more." 8-18-3-15

He was especially critical of treatment given to mental patients, stating that "some were chained like dogs in a cage in the basement." 8-18-3-16

"They didn't have any toilet facilities in the cage and those poor devils had to roll in their own filth. The only times they were moved or cleaned up was when a reporter made a visit or when the grand jury came over to look around." 8-18-3-17

He told of one time when three deputies taunted a mental patient known as "The Bear" and beat the patient because he tore off the badge of one deputy. He identified one of the three. 8-18-3-18

"Deputies in that jail know guys are knocked around, but they don't want to say anything," he declared. "And plenty of prisoners see beatings, too, but they're all afraid to talk. It's disgusting." 8-18-3-19

Sheriff Fields said he did not have any information about whether his deputies had taken statements from former prisoners on jail conditions. 8-18-3-20

However, it was learned that one former inmate, Boone Wise, was picked up by deputies at 6 p.m. last Wednesday and held until 1 a.m. Thursday and gave a statement during that time. Another statement reportedly was received from another ex-inmate. 8-18-3-21

Fields said his deputies have talked with a "great number" of former inmates, who have told them they did not witness any beatings, in a "continuing investigation" of the charges against the jail. 8-18-3-22

The FBI was asked last week to look into the jail probe. Howard said the FBI is not investigating any of the charges, but has referred the matter to the civil rights division which is awaiting a report from the grand jury before deciding whether to act. 8-18-3-23

All witnesses who give the jury information about the jail probe have been promised protection by Criminal Court Judges Eugene F. Fife Jr. and Saul I. Rabb. 8-18-3-24

The second front page article in Complaint Exhibit 8 carried a one column headline, "Key Witness In Haine Case Missing", and reads as follows:

A 23-year-old Brooklyn (N. Y.) man, key witness in the case against fired sheriff's investigator Sgt. Charles W. Haine, has disappeared, Eastern probation officers revealed yesterday. 8-1-7-2

A warrant for the man, Robert Squillan, was ordered issued by Judge M. Fife, Marion Criminal Court, Division 1, following a sheriff's department merit board meeting at which Haine was fired, it was learned yesterday. 8-1-7-3

It is believed Squillan may have fled to Germany. 8-1-7-4

Squillan and his mother, Mrs. Florence Dagrossa, gave Haine money to obtain a suspended sentence and probation on a robbery charge against Squillan last March, according to sheriff's deputies. 8-1-7-5

Mrs. Dagrossa declared this was true at the hearing, and reported her son had run away from home rather than testify. 8-17-7-6

After learning of Squillan's disappearance, Fife ordered the warrant on a charge of violation of probation. 8-18-5-1

Judge Fife yesterday said he took the action because he and Squillan's attorney, William C. Erbecker, had received letters from Squillan saying that sheriff's Sgt. Felson Bowman had threatened and forced him and his mother to sign statements against Sgt. Haine. 8-18-5-2

Mrs. Dagrossa had testified that she pawned her wedding ring for $75 to satisfy Haine's demands, and denied that she had told a reporter for The Star that Sgt. Bowman had threatened her and her son in order to get their statements. 8-18-6-1

Fife declared: "Based on these letters sent to me and his attorney, and in connection with his mother's statements, it is evident someone is tampering with a probationer of this court. 8-18-6-2

Chief Brooklyn Probation Officer, Herbert A. Spitzer, Jr., said Fife signed the warrant Oct. 25, and it was forwarded to the Kings County Probation Department. 8-18-6-3

Yesterday Spitzer said he received word that Squillan had run away from home and could not be located. 8-18-6-4

Brooklyn probation authorities told Spitzer that Mrs. Dagrossa reported that she had received an anonymous phone call in which the caller said, "Bobby has a passport and he's going to Germany." S 18 6-5

Spitzer said they have been unable to determine if Squillan obtained a passport, but have notified Immigration authorities that a warrant is on file for Squillan. S 18 6-7

Squillan wrote to Erbecker on Sept. 5, and to Judge Fife on Sept. 10, and in both letters said Bowman had threatened and forced him and his mother to sign the statements against Sgt. Haine. S 18 6 8

On the basis of reading Erbecker's letter, The Star called Mrs. Dagrossa and her son. At that time they said the contents of the letter were true and that they would repudiate their statements and refuse to testify against Sgt. Haine. S 18 6-9

Squillan and his mother testified before the Marion County Grand Jury on Sept. 27, in regard to the Haine case. And Mrs. Dagrossa said her testimony in the Merit Board hearing was identical with what she gave the grand jury. S 18 6-10

Exhibit 9 (to Complaint Paragraph 9).

Complaint Exhibit 9 (Tr. 58-59; 2558; SR 48-49; SE 757) is a copy of two front-page articles and an article on page 11 published on November 4, 1965. One of the front-page articles carried a six-column headline, "Ex-Inmate Believes McAdams Threatened," and reads as follows:

Another former Marion County jail inmate yesterday told of vicious beatings of prisoners by deputies, including one incident when an inmate was attacked by several deputies and hurled down a staircase. 9-1-2-1

The former prisoner also said he once was a cellmate of Charles P. McAdams, and believed McAdams repudiated his statement that another inmate, Elmer

L. Regan, was beaten by a jail sergeant because McAdams had been threatened. 9-1-2-2

Reagan died of pneumonia brought on by the beating. It was McAdams' statement about Reagan's death that triggered a Marion County Grand Jury investigation of jail brutality and brought statements by a dozen other former inmates about jail beatings. 9-1-2-3

The new statement yesterday included names of 10 inmates and four deputies involved in beatings, and these were turned over to the jury. 9-1-2-4

The former prisoner said he did not want to be identified because he feared reprisals by deputies, but he signed a notarized statement and said he would testify willingly before the grand jury. 9-1-3-1

One of the beatings, he said, occurred in October, 1964, when inmates demonstrated about loss of television privileges. Some prisoners flooded the jail floor and burned two mattresses. 9-1-3-2

"This one sergeant came into the cellblock and grabbed me and slugged me," he said. "He said, 'My wife is sick and if she hears any of this and it kills her, I'll kill all of you.'" 9-1-3-3

The ex-inmate said the sergeant ran around as if crazed and grabbed another inmate, James P. Dearing, and began beating him. 9-1-3-4

"He beat Dearing all the way out of the cellblock and down the stairs and put him in the hole," he stated. 9-1-3-5

Dearing already has given The Indianapolis Star a statement about the beating, and has testified before the jury. 9-1-4-1

"I couldn't even count the times I've seen prisoners, drunks and juveniles mostly, beaten for no reason by deputies," the former inmate said. 9-1-5-1

He said he saw a mental patient known as "Bug Eyes" beaten severely by at least four deputies last May. 9-1-5-2

He said the mental patient "would just stand and stare. He didn't say or do anything to no one. A young deputy, a tall, blond headed kid, came into the cage and when he did he knocked Bug Eyes back and told him to get away from the door. 9-12-1-1

"Bug Eyes hit the deputy and knocked him clear out of the cellblock and when he did three deputies, one a sergeant, ran in. One deputy beat Bug Eyes until he couldn't swing anymore. When Bug Eyes stood up, the other two deputies began beating him. Then the sergeant and the deputy who had worked him over before, picked Bug Eyes up and carried him to the basement steps and threw him down the stairs." 9-12-1-2

He said that when prisoners were taken into the basement it meant they either would get a cold shower or a beating. The former prisoner said he learned the mental patient "had a bunch of ribs broken." 9-12-1-3

McAdams told of Reagan's beating to the grand jury. Then he was picked up by deputies, interrogated, and, according to the Sheriff Robert H. Fields, repudiated his original statement. 9-12-2-1

Reagan was beaten July 14 and died Aug. 7. 9-12-2-2

Although Fields said McAdams repudiated the statement, McAdams' girl friend, Mrs. Lura Kimbley of Danville, Ill., said McAdams had been given drinks of whiskey while he was being questioned and was given a bottle of whiskey by a deputy before he was released. 9-12-2-3

The former prisoner said yesterday he was well acquainted with McAdams and believed McAdams had been threatened. 9-12-2-4

He said McAdams has "a lot of guts. He's seen that beating happen and a lot more, and if he made up his mind to tell it he'd do it and he'd have to be plenty scared to ever back off." 9-12-2-5

The former prisoner, who was in the jail nearly 11 months awaiting trial on a vehicle taking charge said

he decided to tell what he knew on the advice of his attorney.

"I hate to see people who are down and out anyhow get mistreated by people who are supposed to have knowledge and character," he said. 9-12-2-6

The grand jury did not meet yesterday, but will resume its probe today. 9-12-1-7

The other front-page article in Complaint Exhibit 9 (Tr., p. 2558) carried a five-column headline, "Key Haine Case Witness Found In Rome," and reads as follows:

Robert Squillan, a key witness in the case against fired Marion County Sheriff's Sgt. Charles W. Haine, has been located at the American Consulate in Rome, Italy, it was learned yesterday. He disappeared last month. 9-1-4-3

Meanwhile, Haine appealed his dismissal in Marion Circuit Court and The Indianapolis Star received a startling letter from Squillan in which he explained why he fled to Europe, considered defecting to East Berlin, and described Haine—who was accused of extorting money from Squillan—as "still my friend and always will be." 9-1-5-4

Squillan, 23 years old, Brooklyn, N. Y., sought for violation of probation, was held after he appeared at the consulate seeking funds to enable him to return to the United States. 9-1-5-5

Judge Eugene M. Fife Jr. of Marion Criminal Court, Division 1, filed a warrant against Squillan on the probation charge on Oct. 25 after Haine was dismissed when the Sheriff's Merit Board found him guilty of taking bribes and converting a prisoner's money to his own use. 9-1-6-2

Herbert A. Spitzer Jr., chief county probation officer, said the Federal Bureau of Investigation will arrange for Squillan to be returned to the United States. The warrant will be filed with immigration authorities. 9-1-6-3

Fife ordered that either Spitzer or one of his aides return Squillan to Indianapolis once he is brought back to this country. Ordinarily this would be handled by a deputy sheriff, but Fife said he did not want anybody talking with Squillan until he is brought to court. 9-11-2-1

Squillan and his mother, Mrs. Florence Dagrossa, gave Haine money to obtain a suspended sentence on a robbery charge against Squillan last March, the sheriff's department charged. 9-11-2-2

Mrs. Dagrossa appeared at the hearing and stated the charges were true, but Squillan did not appear. His mother said he had fled home rather than testify against Haine. 9-11-2-3

In her testimony, she also said she pawned a wedding ring to get money to pay Haine, and she denied telling a reporter for The Indianapolis Star that a sheriff's sergeant had threatened her in order to get her to sign a statement against Haine. 9-11-2-4

However, Fife ordered the warrant for Squillan after Fife and Squillan's attorney, William C. Erbecker, received letters from Squillan in which he said the sheriff's sergeant, Felson Bowman, had threatened him and his mother to get the statements. 9-11-2-5

Erbecker got his letter Sept. 5 and Judge Fife received the other letter Sept. 10. 9-11-2-6

It was after this that Mrs. Dagrossa told The Star she had been coerced into giving the statement. However, she repudiated this at the merit board hearing. 9-11-2-7

Squillan and Mrs. Dagrossa testified before the Marion County Grand Jury Sept. 27. She said her jury testimony was identical to her merit board testimony. 9-11-2-8

In the Circuit Court appeal, filed by Erbecker, it was charged that the merit board "misinterpreted and misapplied" the law and violated Haine's constitutional rights in overruling three legal pleadings filed by Erbecker. 9-11-2-9

The appeal also listed as errors during the hearing "perjured" testimony of Mrs. Dagrossa and former convict Leon Johnson "which so tainted and permeated the entire proceedings, that the finding, decision and order and determination is contrary to law." 9-11-3-6

One of the charges against Haine was taking money from Johnson, but Haine said this was an attempt to discredit him. 9-11-3-7

Fife said he wanted Squillan, Bowman and all other persons concerned with the case to appear in his court. Based on the letters and Mrs. Dagrossa's testimony, Fife said, "it is evident someone is tampering with a probationer of this court." 9-11-3-8

The page 11 article in Complaint Exhibit 9 carried a three-column headline, "Giving Myself Up At Embassy In Rome, Says Squillan Letter," and reads as follows:

31 October, 1963
Rome, Italy

To: Mr. Rick Johnson
Indianapolis Star

Dear Sir: 9-11-1-2

This is just to let you know that I am giving myself up tomorrow at the American Embassy in Rome. I couldn't take the pressure that was being put on me about the affair involving Sgt. Haine. Because of the pressure and constant worry, I didn't report for work for several days and I lost my job. With no work my probation officer began hounding me. Perhaps I am a person of weak stature, but whatever the reason I left home. I sold everything I had and I even took an extra $200 from another party. I first went to Frankfurt where the plane landed. Then I proceeded on to Bonn where I began to seriously consider my fate. I had it in mind to go to East Berlin and defect from the United States. I just wanted to get away from it all. I was pondering my future and

all that hapepned to me in the past and I was so frustrated that I decided to tell the government just what they could do. 9-11-1-3

I took my Selective Service card from my wallet and burned it and also the 214 from the Army and mailed it along with a letter to the FBI in Washington, D. C. From Bonn I went to Berlin and could not get across to the East because of certain formalities. I was running out of money and so I bought a ticket to Rome and now just about all my money is gone and I am alone and very despondent. Mr. Johnson, because of my actions my family has been split up and everything is so messed up I don't know what is going to happen. 9-11-2-2

The whole affair was caused by the investigation of the Sheriff. I was doing fine on probation for six (6) months and then this had to happen. It caused so much strain on me with worry and all that I just couldn't keep on any longer. So I ran. I don't know what is going to happen to me. I have no future and nothing left any more. But I am going to surrender and see what happens. I will hope for the best in any event. My mother is waiting for welfare since my father walked out on her and Mr. Erbecker has a bill due for $1,096 due in March. I don't know what is going to happen. Tell the Sheriff, I hope he is satisfied. Perhaps he is interested in what his officers do but is he going to pay my mother's rent now and put food on her table? I left just to try and get a fresh start for myself and now I have lost everything I had. 9-11-3-1

I am sorry I disappointed Judge Fife but maybe I won't have to serve all the 10 years. I know I will have to serve a Federal sentence but I'll make the best of it.

Please give the enclosed card to Charlie Haine for me and tell him, no matter what, he is still my friend and always will be. Thank you for reading this. 9-11-3-2

Sincerely yours,

Robert Squillan

The message to Haine on an unstamped postcard read: 9-11-3-3

Rome, Italy
31 Oct. 1965.

Dear Charlie:

Mr. Johnson probably showed you my letter and by the time you get this I will be in custody. I have lost everything for sure now but such is life. Remember me fondly Charlie as I will remember you. You will always be my friend. If you ever get a chance, be sure to see Rome. 9-11-3-4

As always, your friend,

Bob Squillan 9-11-3-5

Exhibit 10 (to Complaint Paragraph 10).

Complaint Exhibit 10 (Tr. 60; 4217; SR 50; SE 536) is a copy of a front page article published on November 5, 1965, which carried a large 8 column headline, "Jury Calls 14 Prisoners", a two column sub-headline, "Picks Witnesses 'At Random' In Brutality Probe", and reads as follows:

The Marion County Grand Jury yesterday picked at random the names of 14 prisoners at the Marion County Jail to testify about alleged brutality at the jail. 10-1-7-1

Most of the inmates testified yesterday among a total of 20 more persons, also including Sheriff Robert H. Fields, who appeared before the jury. 10-1-7-2

The jury obtained a list of all inmates' names from Judge Saul I. Rabb of Criminal Court Division 2, and picked the 14 at random. 10-1-7-3

James E. Bath, deputy prosecutor in charge of the grand jury, said the jury will not be in session today but will reconvene Monday to hear additional jail probe witnesses and witnesses on regular grand jury business. 10-1-7-4

Last night, a former county jail inmate told The Star that another inmate died in the jail after being beaten and left suffering in a bare cell. The sheriff was then James O. Hiner, who died later that year. Fields was appointed to succeed Hiner. 10-1-8-2

The jury, investigating the beating death of Elmer L. Reagan and other alleged brutality at the jail, has heard testimony from 86 persons so far in the mushrooming probe. More than 100 persons are expected to testify before the jury concludes its probe of the beatings. 10-1-8-3

It also was learned yesterday that the grand jury may begin a probe of medical records of jail inmates who have been sent to Marion County General Hospital. It is also believed the grand jury will question each of the doctors who treat prisoners in the jail. The doctors who examine and treat jail inmates are resident physicians from Marion County General Hospital. 10-1-8-4

The ex-prisoner who reported the death of another inmate two years ago said he witnessed the beating and lack of medical attention in the role of a cell block boss. 10-1-8-5

The former inmate, Jack Louis Dearing, 31 years old, is serving a 10-year sentence at the Indiana State Reformatory at Pendleton for his part in the robbery of an Indianapolis liquor store. Dearing is presently awaiting action on a clemency petition. 10-1-8-6

Dearing said in "February or March" of 1963, an unidentified prisoner who evidently was suffering from delerium tremens was placed in "cell number 2" where he stayed for "four or five days" without jail food. 10-1-8-7

Dearing said the man kept saying continuously, "If you don't get me some help I'm going to die." 10-1-8-8

Dearing said the shift sergeant came back to check the man's condition several times. 10-1-8-9

"After he (the inmate) was in there three days, I tried to get the jail doctor to look at him because the

man was down on the floor and was apparently sick." 10-13-3-10

Dearing named a sheriff's sergeant who he said checked the man's condition and who told Dearing, "if he gets any worse let one of the deputies know." 10-13-3-1

Dearing who is a draftsman at the reformatory, said that on the forth day the man was in the cell he attempted to have him taken to the hospital. "He had been vomiting green and shaking as if in chills," Dearing said. 10-13-3-2

Again, Dearing said, the sergeant checked the cell and told him, "let one of the deputies know if he gets any worse." 10-13-3-3

"We all knew if the man didn't receive attention and soon, he wouldn't make it," Dearing said. 10-13-3-4

"It was about 8:30 or 9 p.m. on the fourth or fifth day that the man stopped moving at all," Dearing said. "I personally called the deputy, and he said 'I'll go get the sergeant.'" 10-13-3-5

When the sergeant attempted to rouse the man there was no response. Dearing said he and two other inmates carried the body to a table where a doctor from General Hospital pronounced him dead about 30 minutes later, Dearing said. 10-13-3-6

Dearing said the inmates later learned that the causes of the man's death had been listed as pneumonia. 10-13-3-7

"The man from the time they put him in there had begged for a doctor and for help," Dearing said. 10-13-3-8

Dearing also recalled the death of another inmate under similar circumstances. 10-13-3-9

Dearing said about six weeks after the first man's death a "Negro inmate with the d.t.'s" was placed in Cell 2. He was there two days and was returned to his section, but was returned a day later in "worse condition," Dearing said. 10-13-3-10

Dearing said after three or four days the man "became unconscious and was taken to the hospital." Later, Dearing said he was told by a deputy that "the man had died." 10-13-3-11

Dearing said he also witnessed two deputies "arguing" about which one would "fight a colored inmate." He named the deputy that "won" the argument and added that the deputy came out "second best" to the inmate and the inmate was placed in "the hole" for seven days. 10-13-4-1

Dearing's statement, given to The Star last night will be given to the grand jury today. 10-13-4-2

Dearing's Indianapolis police record includes three arrests and two convictions. The convictions were for disorderly conduct and armed robbery.

Dearing said he would be willing to testify before the county grand jury and that he also would be willing to submit to a lie detector test. 10-14-4-3

The probe was triggered last week when inmate Charles P. McAdams gave the Marion County Coroner's office a notarized statement in which he said he saw a deputy beat Reagan on two occasions July 14. 10-13-4-4

Reagan died Aug. 7 of pneumonia brought on by the beating and 12 broken ribs. McAdams repudiated his statement after he was questioned by sheriff's deputies before and after his grand jury testimony Oct. 26. 10-14-4-5

Sheriff Fields and deputy Jack Churchill gave testimony yesterday as did James Higgins, Lee Long, Charles Hembree, James Byers and Jimmy Green. Jail inmates who appeared were: Robert Beasley, Bobby Graves, William Sears, Joe Smith, Rollin Stapp, Samuel Gray, Alfred James, Jessie Stevens, Larry Thomas, Paul Ford, Downey Holloway and Denzil Neville, a prisoner of the Indiana State Penal Farm. 10-14-4-6

Bath said he hoped the grand jury would be able to make its report sometime next week. The report, which was to have been returned last Tuesday, was delayed by the grand jury probe into the jail. 10-14-4-7

Exhibit 11 (to Complaint Paragraph 11).

Complaint Exhibit 11 (Tr. 61; 5260; SR 51; SE 769) is a copy of a front-page article published on November 6, 1965, with a small 8-column headline, "Ex-Cellmate Backs Beating Report," a one-column sub-headline, "Supports McAdams' 1st Story," and reads as follows:

> A former Marion County Jail cellmate of Charles P. McAdams said yesterday that McAdams told him of witnessing the beating of Elmer L. Reagan by deputy sheriffs. 11-1-1-1
>
> George E. Thomas, 28 years old, 536 Woodlawn Avenue, now serving a 1-to-10-year sentence in the Indiana State Reformatory at Pendleton for vehicle taking, signed a notarized statement saying McAdams described the beating to him. 11-1-1-2
>
> Thomas was the second witness to come forward to corroborate the account which McAdams first gave in a notarized statement, then repudiated after he had been questioned by Sheriff Robert H. Fields' deputies. 11-1-1-3
>
> McAdams' girl friend, Miss Lura Kimbley, 52, Danville, Ill., also said that McAdams had told her of witnessing Reagan's beating. 11-1-1-4
>
> Reagan died of pneumonia brought on by 12 broken ribs in Marion County General Hospital Aug. 7. 11-1-1-5
>
> In another development yesterday, a 59-year-old Southside woman said she believes the prisoner mentioned in former jail inmate Jack L. Dearing's account of a prisoner dying from lack of medical attention in March, 1963, at the jail was her brother, Andrew J. Powell, 63. 11-1-1-6
>
> Dearing, who did not know the prisoner's name, said in a statement Thursday that the prisoner was beaten by deputies and thrown into a bare cell where he became ill and suffered delirium tremens. 11-1-1-7

Mrs. Pearl Roberts, 1552 Lexington Avenue said yesterday that her brother was arrested March 8, 1963, for drunkenness and received a five-day jail term. 11-1-1-8

"He had a bad cold when he was arrested," Mrs. Roberts said, "But he was a healthy man and a cabinetmaker by trade. We didn't even know he was sick until the jail captain came to see us about noon March 13 and told us Jack was dead. He told us Jack had been taking a shower and died." 11-1-1-9

Mrs. Roberts said she talked later with a former inmate who told her deputies had put Powell in the shower and had refused to give him treatment while he was in jail. 11-1-1-10

Thomas said that he was a cellmate of McAdams during September while awaiting completion of a presentence investigation on his conviction in Marion Criminal Court, Division 1, on a charge of vehicle taking. 11-1-1-12

"I have known McAdams for about 10 years," Thomas said, "and I talked to him in jail about it two or three times. He said he saw the beating; he said it was a rotten thing." 11-23-1-1

Another prisoner at Pendleton, who said he has been in and out of the Marion County Jail "quite a few times, off and on since 1959" said he was threatened by a sheriff's deputy who, he said, stole a pack of his cigarettes. 11-23-1-2

Fred R. Roberts, 22 years old, 1206 Fletcher Avenue, who is serving a 10-year sentence for robbery and a 1- to-10-year sentence for grand larceny, also said he saw a man suffering delirium tremens chained to a cell door and hit by deputies who also laughed at him. 11-23-1-3

Thomas said that when he went to the jail in September "there was quite a bit of talk about Reagan. It seemed that if the deputies found out that there was anyone talking about it he was promptly brought out of his cell and told to keep his mouth shut." 11-23-1-4

"The prisoners said deputies, one was a sergeant or lieutenant, had killed him (Reagan). They said the sergeant or lieutenant, I don't know his name but he is a big man, didn't approve of the beating but didn't make any effort to step in. I heard that four or five deputies were involved in the beating." Thomas said. 11-23-1-5

Thomas said that McAdams was called out by deputies after he had talked about Reagan's death. "When he came back, he was scared, shaking all over and white. 11-23-1-6

"Just before McAdams was released, he got a 'floor boy' job on the third shift and I believe they had him out there to keep him from saying anything more about Reagan's death. Those jobs usually go to drunks, or someone doing petty time, not to someone who is in for violation of the offenses against property act," Thomas said. 11-23-1-7

"I think McAdams was threatened or scared and that's why he changed his story." Thomas said. 11-23-1-8

The prisoner added that he was kicked and slapped a couple of times "but I was never really hurt." He said deputies had "no apparent reason" for the assaults. 11-23-1-9

Thomas also told of cruel treatment of sick, weak and young prisoners by deputies during 1962 when he was awaiting trial for four months on an accessory to vehicle taking charge. Thomas' notarized statement, along with Roberts', will be turned over to the Marion County Grand Jury. Both said they would appear before the jurors if requested. 11-23-1-10

Roberts said he was threatened in February, 1964. He said he returned from a meal and found his cigarettes gone. "I asked him (a deputy) if he shook the place down and he said 'yes' and I said 'Well, I've got some cigarettes missing.' I told him I didn't get very much money and that I'd like to have them back. He threatened to take me out and whip me. 11-23-1-11

"I was threatened a few times but I never was beaten. I guess I just shut up, you know," Roberts said.

Speaking of another incident, Roberts said, "About three years ago there was this guy named Joe who had the D. T.'s. They (the deputies) handcuffed him to the bars in front of B. R. (a cell) like a dog and they hit him and then they'd laugh. They brought him his food there on the floor. He was chained there three or four days." 11-23-1-12

The grand jury was not in session yesterday, but it was learned that several witnesses have been subpenaed to testify next week regarding conditions in the jail. 11-23-1-13

One attorney yesterday took legal exception to the prolonged probe the grand jury is making into jail conditions. Ferdinand Samper filed a petition for a court order with the Criminal Court judges "requesting the judges to order the Grand jury to report. 11-23-1-14

Samper, who represents two clients charged with rape, whose cases are being considered by the grand jury, charged that an unreasonable length of time has elapsed since the charge of rape was presented to the court for grand jury action. 11-23-1-15

Exhibit 12 (to Complaint Paragraph 12).

Complaint Exhibit 12 (Tr. 62-63; 3569; SR 52-53; SE 785) is a copy of two articles published on the first page of the second or editorial section on Sunday, November 7, 1965. One of these articles carried a two-column headline, "Jury To Report On Jail Cruelty Charges Friday," and reads as follows:

An investigation growing out of a Marion County Jail prisoner's death has elicited a vast, detailed picture of alleged jail cruelty as victims and witnesses unexpectedly volunteered dovetailing pieces of testimony. 12-2-1-1

Friday, the County Grand Jury is expected to report on its findings. 12-2-1-2

The investigation, made dramatic by the testimony that poured in from all sides, inadvertently had the timing of a stage production. New charges were added day by day. 12-2-1-3

As the startling charges grew, the two Criminal Court judges and the grand jury itself promised full protection to the fear-filled witnesses who appeared. 12-2-1-4

But the pitiful—and portentous—death Aug. 7 of the jail inmate, Elmer L. Reagan, 50 years old, was unreported until The Indianapolis Star learned of it five days later. Cause of his death was pneumonia, brought on by the smashing of his ribs. 12-2-1-5

A mental patient chained in the same cell which Reagan had occupied was charged with second-degree murder in the beating which supposedly led to the victim's death. 12-2-1-6

The grand jury was given the case against the mental patient, William A. Brown. 12-2-1-7

And that was that.

But on Oct. 25, Charles P. McAdams, 35, a barber in jail on a charge of stealing barbering shears at the time Reagan was jailed, charged in a notarized statement that Reagan actually was attacked July 14 by an angry deputy sheriff. 12-2-1-8

After McAdams' charge was brought to light by The Star, the jury's investigation into Reagan's death suddenly broadened. 12-2-1-9

McAdams testified Oct. 26 before the grand jury. Sheriff's deputies took him in custody twice that day—before and after his jury appearance. He reported that deputies sought a statment from him and he refused to give it. 12-2-1-10

Then he disappeared.

The following day, Sheriff Robert H. Fields, under whose jurisdiction the jail is run, declared the missing man had repudiated his statement. 12-2-1-11

But a day later, on Oct. 28, the girl friend of McAdams declared that McAdams, who had told her of Reagan's beating, was "brainwashed" by the deputies who gave him whisky. 12-2-1-12

"He sold out," declared Mrs. Lura Kimbley, 52, Danville, Ill. "He sold out," she repeated. 12-2-1-13

Later, she told Judge Eugene M. Fife Jr. of Criminal Court, Division 1, that she was sure McAdams told the truth in his original statement. A parolee also came forward to say he heard McAdams discussing the death in the jail. 12-2-1-14

Meanwhile, on Oct. 27 began the surprising link-by-link chain of volunteer testimony. 12-2-1-15

On that day, Arthur L. Derringer, 46, truck driver who resides at 115 East 21st Street, declared that "five or six" deputies kicked and beat him last January in the basement of the old jail where Reagan allegedly was beaten before he died. 12-2-2-1

Several days later a prisoner at the Indiana State Reformatory signed a statement relating that he had been beaten severely by a deputy sheriff in the county jail. Three other reformatory prisoners reported they saw the beating. 12-2-2-2

And one of the four said he witnessed the attack on Derringer. 12-2-2-3

The public revelations that followed included: 12-2-2-4

An Indiana State Penal Farm prisoner declared he saw two jailed men beaten by the deputies. 12-2-2-5

A former inmate volunteered information about prisoner mistreatment—including the poking with a stick of a naked man forced to sit on a soggy mattress. 12-2-2-6

Another former prisoner declared a deputy hit him in the stomach, broke his nose and then the prisoner was thrown in the "hole" for three days without food. 12-2-2-7

Another man reported he was beaten by two deputies came to at the bottom of the jail stairs as a deputy kicked him and was beaten again. 12-2-2-8

A 35-year-old Indianapolis man declared he saw a prisoner beaten by deputies. He added that the deputies never intervened when inmates—usually juveniles—were beaten by other prisoners. He said he never saw Americans treated worse in the Chinese prisoner of war camp where he spent three years during the Korean war. 12-2-2-9

A former deputy sheriff scored the jail conditions as "almost medieval," saying that prisoners (mostly drunks) frequently were knocked about and beaten. 12-2-2-10

Ten inmates and four deputies involved in beatings were named by another former prisoner. 12-2-2-11

Steeped in testimony, the grand jury Thursday picked at random the names of 14 prisoners now in jail and called upon them to testify. The same day the death of a prisoner, beaten and left in a bare cell during the regime of the late Sheriff James O. Hiner, was revealed. 12-2-2-12

As the probe proceeded, two deputies were suspended, one for a tear-gas-throwing episode described in McAdams' "repudiated" statement; the other for failure to give his superiors additional information about Reagan's death. 12-2-2-13

An estimated 150 persons will have give their secret testimony before the burgeoning investigation ends, probably by the week's close according to James E. Bath, deputy prosecutor. 12-2-2-14

Friday, a former cellmate of McAdams added farther corroboration to McAdams' original statement. He said McAdams told him of witnessing the beating of Reagan. 12-2-2-15

The second article in Complaint Exhibit 12 carried a six-column headline, "Puzzle For Grand Jury Probing

Jail Brutality, Can Shackled Patient Beat A Man?," and reads as follows:

Comparison of a Marion County Sheriff's Department report on the death of a jail inmate and hospital records has posed a puzzle for the grand jury probing brutality at the jail. 12-2-3-1

Spotlighted is one big question: How could a mental patient, shacked to bars, inflict mortal injuries on another prisoner? 12-2-3-2

Elmer L. Reagan died Aug. 7 of pneumonia induced by a severe beating; after being admitted to Marion County General Hospital July 14. 12-2-3-3

The mental patient, William A. Brown, was charged with second-degree murder. 12-2-3-4

Brown was admitted to Marion County General Hospital on Aug. 2 and records there show conclusively that his arms and legs bore distinct marks of shackles and handcuffs, according to investigators. It was evident he had been in constant restraint for some time, they said. 12-2-3-4

Questioned by doctors, Brown said another man had been put in the cell with him, but Brown declared he had not fought with the man. Brown declared that he heard the man died of malnutrition. 12-2-3-5

Though almost incoherent, Brown at no time was described by attending physicians and nurses as violent or dangerous. 12-2-3-6

He was classified in the records as noisy, belligerent and restless. He talked as if he were dangerous, but never carried out his threats, the reports noted. 12-2-3-7

His most violent actions on record were one episode where he stuffed a toilet bowl with towels and another when he allegedly cursed and made indecent gestures at the wife of a deputy on duty in the hospital detention ward. The deputy struck Brown. 12-2-3-8

While hospital records show Brown regularly is administered tranquilizers, no records are available on drugs given him at the jail. 12-2-4-1

Reagan's final admission to the hospital followed a series of trips there for treatment of open sores on his legs. 12-2-5-1

The hospital's records show that as late as July 8, Reagan's ribs were intact. 12-2-5-2

When brought in July 14, Reagan, a known alcoholic, complained of a cough, a sore hip, and said he ached all over. His chest and abdomen were covered with bruises and open sores. 12-2-7-1

Doctors said Reagan, who was in a semi-coma, could tell them little. 12-2-7-2

Examination disclosed he suffered from 15 broken rib, multiple bruises and a dislocated hip. He was in the early stages of pneumonia. 12-2-7-3

The medical report also notes that Reagan's body was developing pressure sores, caused by lying flat for long periods of time, and indicating he had been very inactive. 12-2-7-4

On July 15, a doctor asked Deputy Jack Churchill how Reagan suffered the 15 broken ribs. The deputy replied that he could not say. 12-2-7-5

The same day, two different doctors examined Reagan and each put down different versions of how Reagan was injured—neither noting the source of his information. 12-2-7-6

One physician reported that Reagan had been beaten by a mental patient. The other noted that Reagan had been in an automobile accident the week before. 12-2-7-7

However, Reagan was arrested June 27 and in custody continuously after that time. 12-2-7-8

There is nothing in the records indicating Reagan ever named his attacker, gave any version of how he was injured or even said he was beaten. 12-2-7-9

In the delayed report made by the sheriff's office and filed with the Marion County Coroner's office, a jail sergeant said that at 6:45 a.m. July 14 he received word Brown had kicked Reagan. 12-2-7-10

Sgt. Robert Smith's report relates he and two deputies, Robert Kirkman and James Burris, went to the "cage" in the jail basement where Reagan told Smith that Brown had kicked him several times. 12-2-7-11

Reagan did not complain of any pain and there were "no apparent fresh wounds," Smith's report said. It added that Brown was restrained "so that he could no longer get to anyone else." 12-2-7-12

When Reagan's beating-induced death was bared Aug. 12 by The Indianapolis Star, no sheriff's reports existed on his beating, his hospitalization or who was suspected in the beating. No investigation was in progress. 12-2-8-1

Brown was not charged until after the story was made public—at which time Sheriff's deputies announced they had found four eye witnesses who gave them evidence. 12-2-8-2

No reports had been made, sheriff's officials explained, because the controversial Sgt. Charles W. Haine, fired by the department on a number of charges including bribery, had been assigned the case. Haine failed to follow up on the investigation, officials said. 12-2-8-3

Among the questions that are unanswered is the one of why a "violent" mental patient was placed in the cell with a man charged with drunkenness. 12-2-8-4

Another is where the supplementary reports were from which Haine was supposed to conduct his investigation. 12-2-8-5

Former inmate Charles P. McAdams, in a notarized statement for the coroner's office, said a deputy sheriff, not a mental patient, beat Reagan after an argument over medicine. (Hospital records show Reagan was given medicine to be administered by the deputies.) 12-2-8-6

McAdams, who later repudiated his story after questioning by deputies, originally maintained, that Reagan was first struck at 6 p.m. July 14. 12-2-8-7

Records show Reagan was taken to the hospital at 5:09 p.m. July 14. Did McAdams tell the truth, but make a mistake about the time or day?

Or did he make up the story? 12-2-8-8

At least three persons, including his girl friend, said McAdams told them he saw a deputy beat a man to death." 12-2-8-9

And dozens of persons are testifying before the grand jury regarding other beatings and brutality they say they have suffered or seen in the jail. 12-2-8-10.

Exhibit 13 (to Complaint Paragraph 13).

Complaint Exhibit 13 (Tr. 64; 5262; SR 54; SE 793) is a copy of an article published on page 21 on November 8, 1965, with a one-column headline, "10 To Testify In Probe Of Jail Today," and reads as follows:

Prisoners from the Marion County Jail and doctors from Marion County General Hospital are among more than 10 witnesses slated to appear before the County Grand Jury today in its continuing investigation of alleged brutality in the jail. 13-21-4-1

Meanwhile, Prosecutor Noble R. Pearcy said he has called a meeting of his top deputies to discuss the progress of the investigation. Pearcy would not comment on the probe, but said, "I'll have more to say tomorrow." 13-21-4-2

James E. Bath, deputy prosecutor assigned to the grand jury, expressed hope that the investigation would be concluded this week, with the grand jury possibly reporting Friday. 13-21-4-3

However, Bath said he did not know whether today's witnesses will wrap up the investigation. 13-21-4-4

Today will begin the seventh week of continuous

session for the five women and one man on the grand jury. 13-21-4-5

So far the grand jury has heard 86 witnesses in the probe of alleged brutality which began when a former prisoner in the jail, Charles P. McAdams, 35 years old, gave The Star a notorized statement that he saw Sheriff's deputies beat Elmer L. Reagan, 50, on July 14. 13-21-4-6

Reagan died Aug. 7 of pneumonia brought on by injuries received in a beating.

McAdams later repudiated the statement after he was questioned twice by Sheriff's deputies, once before and once after his grand jury appearance. 13-21-4-7

Two persons have signed statements saying that McAdams told them he saw deputies beat Reagan. 13-21-4-8

Neither Pearcy nor Bath would say what their feelings are on the progress of the investigation. Pearcy, who also said he wants a grand jury report this week, said he will confer today with Bath, Leroy K. New, Frank Spencer and John Davis. 13-21-4-9

Bath said he could not identify which prisoners and physicians would be called today. 13-21-4-10

However, it is believed the doctors will be asked about Reagan's death and about William A. Brown, the mental patient who, deputies say, beat Reagan in the jail. Brown already has testified before the grand jury. 13-21-4-11

Exhibit 14 (to Complaint Paragraph 14).

Complaint Exhibit 14 (Tr. 65; 4249; SR 55; SE 723) is a copy of two front page articles published on November 9, 1965. One carried a two column headline, "Sheriff's Department Defended By Fields", and reads as follows:

Sheriff Robert H. Fields called a press conference yesterday and said—"the sheriff's department is not evil and depraved, as The Indianapolis Star has charged." 14-1-1-15

Charging that The Star has been critical of him for nearly a year, Sheriff Fields said: 14-1-1-16

"It (The Star) knowingly schemed to procure false evidence to support its charges which it has been publishing and rehashing these past 13 days." 14-1-1-17

The "false evidence" was a statement signed and notarized before the chief investigator for the coroner's office by a prisoner in the Marion County Jail. In the statement, the prisoner, Charles P. McAdams, said he saw sheriff's deputies beat 50-year-old Elmer Reagan on July 14. Reagan later died of pneumonia brought on by the smashing of his ribs. 14-1-1-18

McAdams repudiated the statement after he was questioned by Fields and deputy sheriffs both before and after he appeared before the Marion County Grand Jury to testify in the case. 14-1-2-1

Since McAdams repudiated his statement, four persons have said that they heard McAdams describe the beating of Reagan. 14-1-2-2

Fields said he was reluctant to discuss publicly possible litigation against The Star. 14-1-2-3

The second article in Complaint Exhibit 14 carried a small 8 column headline, "4th Person Told Of Beating Incident", and a one column sub-headline, "McAdams Quoted By Ex-Inmate", and reads as follows:

A fourth person said yesterday in a signed statement that Charles P. McAdams told him he witnessed the beating of Marion County Jail inmate Elmer L. Reagan shortly before Reagan's death. 14-1-1-1

Meanwhile, there were these other developments in the investigation by the Marion County Grand Jury of alleged jail brutality: 14-1-1-2

1. A former jail inmate who made yesterday's statement, Forrest Hester, 19 years old, also charged he was beaten by a jail sergeant and a deputy last July. 14-1-1-3

2. Another former inmate Danny Paul Ritzert, 18 said he witnessed the beating of Hester. 14-1-1-4

3. The grand jury heard testimony from 13 persons, including three doctors. 14-1-1-5

Hester, serving a one-year term at the Indiana State Reformatory for entering to cominit a felony, charged he was beaten in "the hole" at the jail last July after being called from his cell block by a sergeant and accused of fighting. 14-1-1-6

A signed statement by McAdams, 35, in which he charged he saw sheriff's deputies beat Reagan, 50, on July 14, triggered the grand jury probe. McAdams later repudiated the statement after he was questioned by sheriff's deputies before and after his grand jury appearance. 14-1-1-7

Hester said that he believed McAdams "changed his mind at the jail. They made him some kind of a deal . . . When he was talking to me I believed the guy and I still do." 14-1-1-8

Reagan died Aug. 7 of pneumonia brought on by the beating injuries. 14-1-1-9

Three other persons have made statements saying that McAdams told them he saw deputies beat Reagan. 14-1-1-10

In the other beating incident, Hester said he tried to explain that the matter already had been settled by another sergeant, but the sergeant said "he was going to put me in the hole anyhow." 14-1-1-11

The "hole" is a solitary confinement type cell with no bed or toilet facilities. 14-1-1-12

Hester said he demanded to see the jail captain before being placed in the hole and was told to "get back there in the hole . . ." and was "thrown up against the bars." 14-1-1-13

Hester said after a struggle he went back to the hole. He said he started beating on the door "hollering to see the captain" and was told to stop or he would not "get any food." 14-12-1-1

Hester said that as the deputies were leaving he yelled an obscenity at them and they returned. The sergeant entered the cell and, Hester said, "I ducked

the first punch and then he hit me in the stomach." 14-12-1-2

A fight followed during which Hester threw the sergeant "in the corner," Hester said. Hester said he struck the sergeant and had him "down on the floor" when another deputy entered the cell and began kicking "me in the back a couple of times." 14-12-1-3

Hester said he was "hit three or four times in my side." 14-12-1-3

Ritzert, serving a 1-to-10-year term for robbery, said in a signed statement that he witnessed part of the incident. 14-12-2-1

Hester and Ritzert both said they would be willing to take lie detector tests and give their information to the grand jury if called. 14-12-2-2

Hester also charged that he had seen "men chained up downstairs" at the jail. "One's wrists was bleeding because the cuffs were too tight." Hester also alleged that mental patients were "pushed around" at the jail. 14-12-2-3

Ritzert, besides substantiating Hester's statement, also stated he saw James H. Green beaten by a sheriff's sergeant and three other deputies. 14-12-2-4

Green already has testified before the grand jury concerning an alleged beating he said he suffered in the jail. 14-12-2-5

Ritzert also said he witnessed an incident in which a soldier was "smacked in the face a few times," stripped of his clothing and placed in "the hole." 14-12-2-5A

Ritzert said a jail sergeant later shot a tear gas gun into the hole. "And all the guy wanted was his medicine," Ritzert stated. 14-12-2-7

Hester concluded his statement by saying that, "It's just a few of the deputies that done this. It's not the whole sheriff's department. There was some that was awful nice, I thought, and they treated you like a man." 14-12-2-8

The 13 persons who testified before the jury yesterday brought the total to testify in the probe to 99. 14-12-2-9

The doctors who testified were Dr. Arvine G. Popplewell, superintendent of Marion County General Hospital; Dr. Arthur P. Kebel, physician for Federal prisoners at the county jail, and Dr. William Shuck, a resident physician at General Hospital who treats county prisoners. 14-12-3-1

Other witnesses, besides eight penal inmates who testified, were former Deputy Sheriff Richard A. Weisfeld, 1809 Minturn Lane, and James Pedigo, 940 Woodlawn Street, bartender at a Southside tavern. 14-12-3-2

The prisoners who appeared were Harold Kaufman, from the Federal Penitentiary at Terre Haute; Fred Roberts, Jack Louis Dearing, Homer Shaw and George Thomas, all from the Indiana State Reformatory at Pendleton, and Bobby W. Scott, George W. Waldridge and John E. Fitzgerald, all from the Indiana State Prison at Michigan City. 14-12-3-4

James E. Bath, deputy prosecutor in charge of the grand jury, said more witnesses would appear today. 14-12-3-5

Also called to testify yesterday was another Federal prisoner, John Martin Young, but he refused to testify after conferring with an attorney. His regular attorney is out of the city. 14-12-3-6

Bath said the jury may not be able to report on the jail Friday, as planned, if sufficient new witnesses are produced to prolong the investigation. 14-12-3-7

The grand jury will issue its regular report Friday even if findings in the jail probe are not ready, he said. 14-12-3-8

Hester's police record shows he has had eight arrests and three convictions. His convictions include entering to commit a felony, third degree burglary and vagrancy. 14-12-3-9

Ritzert has served terms in the Indiana Boys School at Plainfield and at the Gibault Home. His only adult conviction was for robbery and resulted in his present prison term. 14-12-3-10

Exhibit 15 (to Complaint Paragraph 15).

Complaint Exhibit 15 (Tr. 66-67; 5460; SR 56-57; SE 796) is a copy of two articles published on November 10, 1965, one of which appeared on the front page, and the other on page 17. The front page article carried a small 8-column headline, "Injuries Revealed In 2d Jail Death," a two-column sub-headline, "Two Broken Ribs of Pneumonia Victim Reported," and reads as follows:

A Marion County Jail inmate who died of pneumonia in Marion County General Hospital last July suffered two fractured ribs and had been left alone in a cell with a mental patient although he was ill, it was learned yesterday. 15-1-1-1

Dr. Robert C. Collins, county coroner, said he intends "to have another look at the case" of the victim, Dane Crick, based on a signed sheriff's report that Crick lay ill and nude on the floor of his cell for at least two days. 15-1-1-2

The mental patient was William A. Brown, the same inmate accused by sheriff's deputies of the fatal beating of another inmate, Elmer L. Reagan, whose death triggered a widespread investigation of jail brutality by the Marian County Grand Jury. 15-1-1-3

Brown admitted in a statement that he "rested my knee on his (Crick's) stomach." 15-1-2-3

Crick, 62 years old, a retaired painting contractor, died at 1:30 a.m. July 14 about seven hours after he was taken unconscious to General Hospital from his "basement cage" at the jail where he was being held on a drunkenness charge. 15-1-2-4

His daughter, Mrs. Lula M. Wieland, 721 Memorial Drive, Beech Grove, a registered nurse, charged yes-

terday that "at least neglect" was involved in her father's death. 15-1-2-5

Coroner's records listed cause of death as acute bacterial pneumonia but showed that Crick had suffered two fractured ribs. 15-1-2-6

At the time of Crick's death, Brown said in a statement to sheriff's deputies: "Yesterday and the day before he (Crick) would lay there and would not eat. White stuff would come out of his mouth." 15-1-2-7

Brown, 26, was charged with second-degree murder in Reagan's death. 15-1-2-8

Brown said Crick "was crazy. He was a mad man. He wouldn't keep his clothes on." 15-1-2-9

Although Brown said in the statement that Crick was sick in the cell for two days, sheriff's investigators did not explain why Crick had not been taken to the hospital earlier. 15-10-2-1

Records show Crick was found ill by deputies about 6 p.m. July 13. 15-10-2-2

Mrs. Wieland said when she went to the jail to collect her father's belongings a deputy told her that Crick had "suddenly gone into d.t.'s (delirium tremens)". 15-10-2-3

She said he was willing to testify before the grand jury about Crick's "mysterious" death. 15-10-2-4

"I'm a nurse and I know a man doesn't get pneumonia and die in a few hours." 15-10-2-5

One of the sheriff's reports on Crick's death was made by Sgt. Donovan King, who has been suspended by Fields for allegedly firing a tear gas shell into a cell. 15-10-2-6

King's report stated: "It was advised that this man had been having illusions and had been through d.t.'s, he had not had any clothes on him for two days, each time they were put on him he took them off and lay nude on the floor."

Crick had been in jail since July 7. 15-10-2-7

At the time of Crick's death, former Sheriff's Sgt. Charles W. Haine interviewed and took a statement from Brown. 15-10-2-8

Haine said recently that sometime in July he interviewed Brown in connection with the death of a prisoner, whose name he did not recall, and did not believe that Brown was violent. 15-10-3-1

Haine said Brown told him that the prisoner began having delirium tremens and became violent, so Brown put his knee on the man's stomach and pinned his arms with just enough pressure to hold him still. 15-10-3-2

Haine also said Brown denied that he ever struck the prisoner. 15-10-3-3

Reagan was beaten July 14 and died Aug. 7. The murder charge against Brown was filed after The Indianapolis Star learned of Reagan's death. 15-10-3-4

The Grand Jury probe of jail brutality started Oct. 27 after another inmate, Charles P. McAdams, signed a statement charging that Reagan had been beaten by a deputy. Reagan died of pneumonia brought on by beating injuries. 15-10-3-5

McAdams later repudiated the statement after he was interrogated by Fields and his deputies, but since then four persons have stated that McAdams had told them about Reagan being beaten by a deputy. 15-10-3-6

More than a dozen inmates and former inmates have told of other jail beatings since the probe started. 15-10-3-7

Seven more persons testified in the grand jury investigation yesterday, including Sheriff Robert H. Fields and Dr. Collins. Fields has made several appearances before the jury since the probe began. 15-10-3-8

Others who testified yesterday were Sheriff's Sgts. Richard Warrum and James Mellege; Deputy Carl Rankin; Gene Coykendall, a prisoner at the jail, and

Exhibit 16 (to Complaint Paragraph 16).

Complaint Exhibit 16 (Tr. 68; 5265; SR 58; SE 803) is a copy of two front page articles published on November 11, 1965. One of carried a large 8-column headline, "Jury To Get Crick Evidence", a two column sub-headline, "2d Of Jail Deaths Brings Possible Negligence Probe", and reads as follows;

> Evidence in the death of a retired painting contractor will be submitted to the Marion County Grand Jury for consideration of "possible negligence." 16-1-7-1
>
> Dr. Robert C. Collins, Marion County coroner, said yesterday he would turn over to the jury the evidence in the case of Daner Crick, 62 years old, old, who died of pneumonia in Marion County General Hospital last July after being taken there from the Marion County Jail. 16-1-8-2
>
> The grand jury paid a surprise visit to the jail yesterday and was given a tour of the new building by Sheriff Robert H. Fields. 16-1-8-3
>
> Meanwhile, there were these other developments in the jury's investigation of the alleged brutality in the jail. 16-1-8-4
>
> 1. A former inmate at the jail will be shown photographs of Crick to determine if Crick was "an old man going into the d. t.'s" (delirium tremens) that the inmate said he saw "pushed" against the wall of the basement cage in the jail and fall into unconsciousness in July. 16-1-8-5
>
> 2. Two other former jail inmates testified yesterday before the grand jury. 16-1-8-6
>
> 3. The jury now is scheduled to report at 2 p.m. Monday. It has not been announced if the report will include findings in the jail probe. 16-1-8-7
>
> 4. The founder and president of a national organization for the rehabilitation of alcoholics charged yesterday that "jail is no place for an alcoholic . . ."

and that the best action for persons suffering from delirium tremens is to "immediately get them to a hospital for treatment." 16-1-8-8

Mr. Collins said yesterday he has assigned his chief investigator, Betnel Gaither, to obtain additional evidence in Crick's death. 16-1-8-9

Dr. Collins said he will talk to former jail inmate Denzil Loren Neville, Jr., 22, who is now an inmate at the Indiana State Farm at Putnamville, for information in the Crick investigation. 16-1-8-10

Neville, in a notarized statement to The Star, stated he had seen an "old man" in the basement cage last July who was pushed against a wall by a deputy and fell unconscious. 16-1-8-11

Crick was discovered unconscious in the basement cage about 6 p.m., July 14. He was found in an autopsy to have suffered two fractured ribs. 16-1-8-12

Neville will be shown photographs of Crick in an attempt to identify him as "the old man," Dr. Collins said. 16-1-8-13

Dr. Collins said, although the death has been ruled due to natural causes there probably still is a question of negligence." He added, "according to the sheriff's statements in the case the man apparently was sick for two or three days before he was sent in. This, of course, makes you wonder. If he wasn't fed or anything, it could have been a contributing factor in the death." 16-10-2-1

Reports by sheriff's investigators of the July 14 death of the painting contractor stated he had been "having illusions and had been through d. t.'s" and "he had not had any clothes on him for two days" prior to his death. 16-10-2-2

The sheriff's report also stated Crick had been placed in the "basement cage" with a former mental patient because Crick had "caused a disturbance on the main floor during visiting." 16-10-2-3

Crick's daughter, Mrs. Lula M. Wieland of Beech Grove, said yesterday her father was an "extremely

quiet" man. Mrs. Wieland, a registered nurse, said "If dad did cause a disturbance it was because he was sick." Mrs. Wieland added, "Dad was very polite. I find the sheriff's report of dad's actions 'out of place' with the man I knew as my father." 16-10-2-4

A man who has "sobered up maybe 5,000 persons, six of them in d. t.'s" said yesterday, "alcoholism is a disease and it is unjust to jail a diseased person." 16-10-2-5

Arthur D. Pratt Jr., founder and national president of the Flynn Christian Fellowship House, said delirium tremens is a form of starvation. "It's a very dangerous state and the best immediate treatment for it is to get a drink into the person . . . and also immediately to get them to the hospital and treat them with glucose and sedatives." 16-10-3-1

Pratt emphasized the importance of getting the person to the hospital "immediately."

Former inmates of the jail have told The Star persons suffering from d. t.'s are "usually placed in the basement cage." 16-10-3-2

The grand jury yesterday appeared unannounced at the jail and toured the building before hearing testimony from two inmates at the Indiana State Reformatory at Pendleton. 16-10-3-3

The inmates, Forrest Hester, 19, and Danny Ritzert, 18, had given signed statements to The Indianapolis Star concerning an alleged beating Hester said he suffered at the jail. 16-10-3-4

The grand jury will not meet today. 16-10-3-5

The second article in Complaint Exhibit 16 carried a one column headline, "FBI Arrests Squillan In LBJ Threat", and reads as follows:

Robert F. Squillan, a key witness in the case against fired Marion County Sheriff's Sgt. Charles W. Haine, was arrested yesterday for allegedly threatening the life of President Lyndon B. Johnson in a letter. 16-1-7-2

The FBI said Squillan, a 23-year-old resident of Brooklyn, N. Y., was taken into custody about 6 p.m. at Kennedy International Airport in New York as he returned from Rome, Italy. 16-1-7-3

Squillan was held under $25,000 bond in the Federal House of Detention in New York. 16-1-7-4

John F. Malone, assistant director of the FBI in charge of the New York office, said Squillan had sent a letter from Rome to the FBI which "contained a threat to injure the person of Lyndon Baines Johnson, President of the United States." 16-1-7-5

The FBI said Squillan was identified as the writer of the letter through handwriting analysis. 16-1-7-6

Contents of the letter were not disclosed. 16-1-7-7

The FBI said Squillan faces trial in the Federal Court for the Eastern District of New York and that the Federal charge will take precedence over parole violation charges pending against Squillan from Marion Criminal Court, Division 1. 16-1-7-8

Judge Eugene M. Fife of the Marion County court filed a warrant against Squillan on the probation charge Oct. 25. 16-1-7-9

Squillan disappeared from his Brooklyn home in late October before he could be picked up on the probation violation charge. 16-1-7-10

He turned up at the American Consulate in Rome Nov. 3 and the same night The Indianapolis Star received a startling letter from Squillan in which he said: 16-10-1-1

"I was pondering my future and all that happened to me in the past and I was so frustrated that I decided to tell the government just what they could do. 16-10-1-2

"I took my Selective Service card from my wallet and burned it and also the 214 from the Army and mailed it along with a letter to the FBI in Washington, D. C." 16-10-1-3

Squillan and his mother, Mrs. Florence Dagrossa,

gave Sgt. Haine money to obtain a suspended sentence on a robbery charge against Squillan last March, the sheriff's department charged. Mrs. Dagrossa appeared at a Sheriff's Merit Board hearing in which Haine was found guilty and she stated the charges were true, but Squillan did not appear. His mother said he had fled home rather than testify against Haine. 16-10-1-4

Squillan and Mrs. Dagrossa testified before the Marion County Grand Jury Sept. 27. She said her jury testimony was identical to her merit board testimony. 46-10-1-5

Judge Fife and Squillan's Attorney, William E. Erbecker, both had received letters from Squillan in which he said a sheriff's investigator had threatened himself and his mother to get statements against Haine. 16-10-1-6

Mrs. Dagrossa then confirmed to The Star that she had been coerced into giving the statement. She repudiated this, however, at the Merit Board hearing. 16-10-1-7

Exhibit 17 (to Complaint Paragraph 17):

Complaint Exhibit 17 (Tr. 69-70; 5266; SR 59-60; SE 808) is a copy of three articles, one on the front page and two on page 17, published on November 12, 1965. The front page article carried a five column headline, "Prisoner Identifies Crick Photo", and reads as follows:

A 22-year-old inmate at the Indiana State Penal Farm at Putnamville yesterday identified a photograph of Daner Crick as the man he saw fall unconscious last July in the Marion County Jail after being pushed against a wall by a deputy. 17-1-2-1

The farm inmate, Denzil Loren Neville Jr., said he saw the 62-year-old retired painting contractor lie "naked . . . dirty . . ." and "sick" on the cement floor of a basement cage in the jail last July. 17-1-2-2

Crick died July 14 in Marion County General Hospital of acute bacterial pneumonia and the death at that time was ruled due to natural causes, but it was learned Tuesday by The Star that Crick had lain ill in a basement cage with a mental patient for at least two days before his death. 17-1-3-2

Neville, serving a one-year term under the minor statute for first degree burglary, said he was placed in the cage with Crick and others for about three hours. 17-1-3-3

Neville selected Crick's photograph from among 10 Indianapolis Police Department "mug shots" yesterday in the presence of five State Farm security guards, including Maj. Robert Garrison and Capts. Charles A. Thompson and James Lyon. Crick's photograph had not previously appeared in newspapers. 17-1-3-4

Dr. Robert C. Collins, Marion County coroner, said he will present evidence in the Crick case, including Neville's statement, to the grand jury today for consideration of possible negligence. 17-1-3-5

Dr. Collins said he believes that reports that Crick lay sick, hungry and nude for two or three days in the jail warrant an investigation of possible negligence. 17-1-4-1

Neville had given a signed statement to The Star Nov. 1 about an alleged beating he said he suffered in the jail. 17-1-4-2

In that statement he included an account in which he said he saw an "old man . . . going into d.t.'s" who, he said, was shoved against a wall by a deputy when the old man tried to get out of the cage. 17-1-5-1

Noting the similarities in the incident mentioned Nov. 1 by Neville and the details of Crick's death which were bared by The Star Wednesday, another statement was obtained yesterday. 17-1-6-1

In yesterday's statement, Neville said "the old man that I just identified in the picture as Daner Crick was holding onto the door trying to work his way out of the cage. He couldn't stand up by himself. 17-15-3-1

"Mr. Crick kept coming out, so the deputy walked over to him, took a hold of him and pushed him back into the cage. The old man went up against the wall and hit the wall and fell down." 17-15-3-2

Neville said two "trusty" inmates tried to bring him to." 17-15-3-3

"I thought he was dead fore they took him out, the way the old man acted," Neville said. "They carried him upstairs and he was limp. I thought he was dead when they carried him upstairs." 17-15-3-4

Neville volunteered to take a lie detector test and said he is willing to testify before the grand jury concerning the Crick case. 17-15-3-5

Neville said Crick had "big sores all over his ankles and wrists . . . They looked like marks from chains." 17-15-3-6

Neville said he was in the cage with Crick for about three hours. He said he had just come to the jail from Municipal Court, where his case had been continued. 17-15-3-7

"All the time I was in there he (Crick) laid on the cement floor and didn't even move. He was naked all this time. There were deputies who saw him lying there, but they just acted like they didn't care," Neville said. He added, "he (Crick) was all dirty and it looked like he'd been there quite a while." 17-15-3-8

A report of the incident was made by sheriff's deputies and a signed statement given to a sheriff's investigator by a mental patient who was said to have been in the cage with Crick. 17-15-4-2

The mental patient was William A. Brown, the same inmate accused by sheriff's deputies of the fatal beating of another inmate, Elmer L. Reagan. Reagan's death touched off an investigation by the grand jury of alleged jail brutality. 17-15-4-3

Brown said in his statement that Crick had been sick in the cell for two days.

In another report made by Sgt. Donovan L. King,

who has been suspended by Sheriff Robert H. Fields for allegedly firing a tear gas shell into a cell. King stated: "I was advised that this man had been through d. t.'s, he had not had any clothes on him for two days, each time they were put on him he took them off and lay nude on the floor." 17-15-5-1

Arthur D. Pratt Jr., local authority on alcoholism, has stated that the best treatment for a person in "d. t.s" is to immediately get them to a hospital." 17-15-5-2

The investigation of Crick's death by The Star was trigged when his daughter, Mrs. Lula M. Wieland of Beech Grove, told The Star, "I'm a nurse and I know a man doesn't get pneumonia and die in a few hours." 17-15-5-3

According to the sheriff's reports Crick was found ill about 6 p. m. July 13 and taken to Marion County General Hospital where he died seven and one-half hours later. 17-15-5-4

James E. Bath, deputy prosecutor in charge of the grand jury, said yesterday that the grand jury will report Monday, but not on the probe of the Marion County Jail. 17-15-5-5

The Monday report, Bath said, will be on regular grand jury business. 17-15-5-6

"It's hard to say just when we'll have a report on the jail investigation," Bath said. "We want to hear every possible witness and then study the evidence. It is quite likely that the grand jury will make a special report regarding the jail," Bath said. 17-15-5-7

One of the page 17 articles in Complaint Exhibit 17 carried a two column headline, "Erbecker to Defend Squillan on Threat", and reads as follows:

Attorney William C. Erbecker of Indianapolis said last night he will defend Robert F. Squillan of Brooklyn, N. Y., who was arrested Wednesday night on a charge of making a threat on the life of President Lyndon B. Johnson. 17-17-1-4

Erbecker previously represented Squillan in Marion Criminal Court, Division 1, in March and obtained a suspended sentence for the 23 year old man on a robbery charge. 17-17-1-5

Erbecker said he offered his services to Mrs. Florence Dagrossa, Squillan's mother, last night on the basis that Squillan sought his counsel in September. 17-17-1-6

At that time, Squillan wrote a letter to Erbecker saying that Sgt. Edson Bowman of the Marion County Sheriff's department had been to their home and after threatening both him and his mother with arrest, had forced them to sign statements against Sgt. Charles W. Haine discharged sheriff's investigator. 17-17-1-7

Haine was fired last month after he was found guilty of accepting money from Mrs. Dagrossa and Squillan and on other departmental charges. 17-17-1-8

"I believe," Erbecker said, "that the only reason in the world why that boy could act so irrationally as making a threat on the life of the President is to stay out of the hands of the Marion County Sheriff's department." 17-17-1-9

Erbecker added that Squillan asked him to protect his rights in the September letter and that he believes Squillan's present trouble stems directly from "illegal" methods employed by the Sheriff's office. 17-17-1-10

Squillan will appear for arraignment today in Federal Court in New York City. He is being held on $25,000 bond. He was arrested by FBI agents as he got off an airplane at Kennedy International Airport and charged with making a threat to injure the President. 17-17-1-11

Erbecker said Mrs. Dagrossa will notify him immediately after the hearing today and tell him when to come to New York to prepare her son's defense. 17-17-2-5

Erbecker said he offered his services at no fee because he knows the family's financial plight and also

will represent the youth in a future hearing on a violation of probation charge. 17-17-2-6

Judge Eugene M. Fife of Marion Criminal Court, Division 1, filed a warrant against Squillan for violation of probation on Oct. 25. 17-17-2-7

Squillan disappeared from his Brooklyn home before he could be picked up on the charge. He turned up at the American Consulate in Rome, Nov. 3, and the same night The Indianapolis Star received a letter from Squillan in which he said he was giving himself up and had burned his draft card and mailed its ashes, along with a letter, to the FBI. 17-17-2-8

The other page 17 article in Complaint Exhibit 17 was referred to on the front page with a note which stated: "Governor asks that prisoners write him directly . . . Page 17." This article carried a two column headline: "Branigin Wants His Jail Mail Sent Uncensored", and reads as follows:

Governor Roger D. Branigin yesterday disclosed that he has instructed correction officials to let prisoners write directly to the Governor, without the censorship by prison officials applied to all other outgoing mail. 17-17-1-1

Branigin commented. "I thought there would be some hesitancy—we wouldn't be able to know what's going on, if the mail is censored. If a man wants to write to the Governor, he ought to be able to write to the Governor." 17-17-1-2

The policy, set about two months ago, has no connection with the current allegations of beating of prisoners in the Marion County Jail, the Governor said. The jail is operated by Sheriff Robert H. Fields and is not part of the state correctional system. 17-17-1-3

There also was no specific incident in the state system that prompted the change, he added. 17-17-2-1

"We thought it is a better opportunity . . . if a fellow is behind bars, for him to express himself."

Branigin stated. "I want to know. That doesn't necessarily mean I will believe what they write." 17-17-2-2

About 25 to 40 letters a week come to his office from prisoners in the state institutions, the Governor said. But the letters he received so far have not revealed anything startling, he continued. 17-17-2-3

"Most of them are asking for a review of their case, a parole or a transfer to another institution," Branigin said. 17-17-2-4

Exhibit 18 (to Complaint Paragraph 18).

Complaint Exhibit 18 (Tr. 71; 5267; SR 61; SE 843) is a copy of two front page articles published on November 13, 1965. One carried a three-column headline, "Separate Jail, Sheriff, Correction Chiefs Say," and reads as follows:

Completely separate operation of imprisonment and law enforcement functions was advocated yesterday by correction authorities as investigation of alleged brutality at the Marion County Jail continued. 18-1-4-1

The heads of Indiana's three adult correctional institutions for male prisoners said most authorities agree law enforcement and imprisonment are two non-related functions and should be operated as such instead of as one operation as they are at the Marion County Jail. 18-1-4-2

John W. Buck, superintendent of the Indiana State Reformatory, Pendleton, and a 25-year veteran of prison work, said he believes "abuses" in jail are held to a minimum where the jail and the sheriff's offices are separate. 18-1-4-3

Where a professional, experienced jailer is in charge instead of a professional policeman, the institution will be run more efficiently, he said. "Jailing and law enforcement are two different things," Ward Lane, warden at the Indiana State Prison, Michigan City, added. 18-1-4-4 "In larger cities, they have them separated." 18-1-5-1

Albert Ellis, superintendent of the Indiana State Farm, Putnamville, said special training is given men who work at the farm. "The work of a jailer is a different type of work." 18-1-6-1

Buck, head of the State Prison's Educational Program for many years and a criminology teacher at Anderson College, contended the ideal jail is operated on a "workable merit system." He hastily added he does not intend the merit system recommendation to be critical of either political party. 18-10-5-1

"I wouldn't say a policeman doesn't know how to handle a prisoner in jail," Ellis said. "A lot of it is good common horse sense. But a policeman arrests a man and keeps him until the courts decide his guilt or innocence. We try to help him and treat him humanely for the time he is separated from his home and community." 18-10-5-2

Ellis said he is a member of the American Congress for Corrections and the Wardens Association. 18-10-5-3

Buck pointed out a psychological problem in the possible animosity a prisoner may feel toward policemen who arrested him. Even if jailers wore different uniforms in areas where the two functions are combined, the inmates' sense of hostility would be reduced, he said. 18-10-6-1

Some of the larger cities in which the two are separated were listed as Miami, Los Angeles, Detroit and Chicago.

All state correctional institutions are operated by professional prison officials, not state police. 18-10-6-2

Persons who make the arrests should not belong to the same department charged with handling the prisoner afterward, Buck contended. 18-10-6-3

"When you get into a massive jail enterprise such as there is in Marion County, where institutions are larger than some state prisons in the country, you have to look at it positively and give serious consideration to the problem," Buck said. 18-10-6-4

The Marion County coroner said yesterday he is considering a "re-evaluation" of the report system concerning deaths of Marion County Jail inmates. 18-10-6-5

The coroner, Dr. Robert C. Collins, said he is primarily concerned with the cause of death, but added circumstances in the pneumonia death of Daner Crick may warrant more detailed information. 18-10-6-6

Crick, 62 years old, a retired painting contractor, died July 14 in Marion County General Hospital about seven and one-half hours after he was found nude and ill in a basement cage with a mental patient. 18-10-7-1

Sheriff's reports of the incident stated Crick had not "eaten for several days . . . had been having illusions and had been through O. T. S. . . . and had not had any clothes on him for two days." 18-10-7-2

Dr. Collins said a "mixup" in its office prevented the Crick case from being presented to the grand jury yesterday. 18-10-7-3

He said the evidence will be offered to the grand jury Monday. 18-10-7-4

The evidence includes a signed statement by Denzil Loren Neville Jr., 22, an inmate at the Indiana State Farm at Putnamville. 18-10-7-5

Neville has identified a photograph of Crick as the man he said he saw lie "naked . . . dirty . . ." and "sick" on the cement floor of a basement cage in the old jail last July. 18-10-7-6

Neville said while Crick lay motionless on the floor of the cell "there were deputies who saw him lying there, but they just acted like they didn't care. 18-10 7-7

Neville said he last saw Crick being carried "limp" by two floor boys from the basement of the jail. 18-10-7-8

George Cox, identified as a former inmate in the jail, was the only person who testified yesterday before the grand jury. 18-10-7-7

The regular report of the grand jury will be given at 2:30 p. m. Monday. 18-10-7-10.

Prosecutor Noble R. Pearcy said yesterday reports on the probe of alleged brutality in the jail probably will not be made until late next week. 18-10-7-11

Several prisoners who have testified before the Grand Jury had volunteered to take lie detector tests to substantiate their statements. 18-10-7-12

When asked yesterday if such tests were being conducted, Prosecutor Pearcy said, "if the grand jury wants lie detector tests, the tests will be arranged at the state police headquarters of any other place it might want them. 18-10-8-1

The other front-page article in Complaint Exhibit 18 carried a two-column headline, "Sheriff Fields Sues The Star," and reads as follows:

Marion County Sheriff Robert H. Fields yesterday filed suit in Marion Circuit Court for $834,480.40 against Indianapolis Newspapers Inc. for alleged defamation. 18-1-5-3

The suit was based on a series of stories appearing in The Indianapolis Star from Oct. 27 through yesterday regarding charges of brutality at the Marion County Jail made by prisoners and former prisoners. 18-1-5-4

The complaint charged the series of articles in The Star "willfully and maliciously" were contrived to mean he: 18-1-5-5

1. Was accessory-after-the-fact to murder. 18-1-5-6

2. Maliciously prosecuted or conspired to maliciously prosecute an innocent person for murder. 18-1-5-7

3. By force and threats endeavored to influence, intimidate and impede a witness. 18-1-5-8

The Star began an investigation of alleged brutality at the jail after receiving reports that the death of

Elmer L. Reagan, 50 years old, followed a beating by a deputy sheriff, rather than a mental patient as the sheriff's office had reported. 18-1-5-9

A former inmate of the jail, Charles P. McAdams, signed a statement given to an investigator for the Marion County coroner's office and a reporter for The Star in which he said he saw Reagan beaten by the deputy. 18-1-5-10

McAdams appeared before the Marion County Grand Jury Oct. 26, but he was taken to the sheriff's office in the jail both before and after the jury appearance and questioned by Fields and deputies. 18-1-5-11

McAdams subsequently repudiated his original statement. But more than a dozen other prisoners later gave statements indicating brutality at the jail. 18-1-6-3

Four other persons also gave statements saying that McAdams had told them of witnessing the beating of Reagan. 18-1-6-4

Reagan was beaten by the deputy in the jail July 14, according to McAdams' original statement. Reagan died in Marion County General Hospital Aug. 7 of pneumonia brought on by broken ribs, according to an autopsy report. 18-1-6-5

Exhibit 19 (to Complaint Paragraph 19).

Complaint Exhibit 19 (Tr. 72; 4070; SR 62; SE 847a) is a copy of two articles published on Sunday, November 14, 1965, on the first page of the second, or editorial section. These two articles shared a common headline "2 Men Died—Who Were They?" One pertained to Elmer L. Reagan and bore a headline entitled "Real Craftman When Working" and read as follows:

Fifty-year-old Elmer L. Reagan had achieved a reputation as an excellent tailor in clothing shops in Indianapolis and Louisville through the years, but drinking had all but erased that claim to frame. 19-1-5-1

However, evidence that his death Aug. 7 in Marion County General Hospital resulted from a beating at the hands of deputies instead of a mentally ill inmate put his name into public conversation to a degree he never enjoyed in life. 19-1-5-2

Harold L. Reagan, 55, Louisville, Ky., said his brother "was kind of fat when he was a youngster. We lived on a farm then and he more or less didn't have a chance to deal with other children his own age. 19-1-5-3

"I often thought that may have affected him in his later life. He was not too much of a social type, his older brother said. Elmer was the youngest of the boys, although his sister is younger than he." 19-1-5-4

When Reagan was 9 years old, the family moved to Louisville because of hard times on the farm. 19-1-5-5

Reagan completed junior high school in Louisville, and then went to work for a tailor where he learned his trade and met his wife, Helen, who worked as a beautician in the same building. 19-1-5-6

They married in the late 1930s and their son, Ronald, was born in 1940, Harold continued. 19-1-5-7

Another brother, Fred Reagan, 62, also of Louisville, said the marriage was a happy one for several years and then both started drinking and separated just as Ronald was about to begin school. The boy's maternal grandmother adopted Ronald and he took the last name of Banet. Ronald, now the father of three, lives in Clarksburg, Ind. 19-1-5-8

Mrs. Banet, Ronald's wife, said as far as she knows, Ronald didn't see his father from that time until he visted him in the intensive care section of General Hospital shortly before Reagan's death. 19-1-5-9

No record has been found of Elmer Reagan's early years in Indianapolis. Police found him drunk and unable to stand in the first block of East New York Street five days after Christmas, 1960. He had three other arrests here for drunkenness: In University Park

May 22, 1964, at Ohio and Illinois May 24 of this year and Vermont and Alabama, last June 25. 19-1-6-2

Since New Year's Eve of 1963, he had lived primarily at the Hoosier Hotel, 440 Massachusetts Avenue. 'He was the nicest guy you would ever want to meet,' George Waldren, manager of the hotel said. 'He drank heavily but when he was up and around, he was very nice. No profanity, no trouble at all except drinking.' 19-1-6-3

Reagan lived at the hotel until April of 1964 and returned in January of this year, staying there until he went to the jail for the last time. 19-1-6-4

In his $10.50 a week room, which has a window that looks across a tar paper roof for about 20 feet where it meets another wall of the hotel, Reagan spent most of his time, Waldren said. 19-1-6-5

"When he was working, he always came home to his room after stopping to pick up some whisky or wine and seldom left. 'I bet he was not out at night three times since he returned here in January," Waldren added. "He had a television, but the tube didn't work. He would sit in there and listen to the sound and drink." 19-1-6-6

The last time Reagan climbed the 21 steep stairs to the second floor room was June 18, Waldren said. 19-1-6-7

Reagan had worked his trade at the Leon Tailoring Company the last five years. "He didn't work steady, but he was a real craftsman when he did work," his former boss said. "He was good enough that he didn't have to work steady to keep his job. He was the nicest guy there was when he was sober." 19-1-6-8

The second article in Complaint Exhibit 19 pertained to Daner Crick, bore a headline "He Was Always In Good Humor," and reads as follows:

The former wife of Daner Crick, who died July 14 as the result of alleged brutality and deglect at the

Marion County Jail, said yesterday Crick often drank too much but certainly was no criminal. 19-1-7-1

Then Mrs. Muriel Crick, his wife for 40 years before they were divorced, sobbed: 19-1-7-2

"We would be married today, if he as alive. He had been doing so good I was going to remarry him. I didn't div[redacted] him because I didn't love him." 19-1-7-3

Of his latest drinking spree, which landed him in jail and subsequently in Marion County General Hospital, where he died, Mrs. Crick said: 19-1-7-4

"He didn't bother anyone and always was in good humor, but if pushed far enough he would fight back. I've wondered if that is what happened to him when he was in jail the last time." 19-1-7-5

Although he drank throughout his adult life, he stayed sober for a 14-year period at one time and during the last year had only gone on three benders, associates recalled. 19-1-7-6

The last one ended in his death from pneumonia, allegedly resulting from the fracture of two ribs and lack of food and attention in the jail where he was, according to evidence, allowed to lie sick and nude without food on a bare, cold concrete floor for two days. 19-1-7-7

Crick had sought help during the last year at the Central Indiana Alcoholism Clinic operated at Central State Hospital by the Indiana Department of Mental Health. 19-1-7-8

The Rev. Chester Minton, an Episcopal priest who attends court sessions for drunkenness cases as a consultant for the clinic said, "a person with a drinking problem should be put in the proper category as a sick person, not a criminal." 19-1-8-1

Crick's police record goes back to 1938 when he first was arrested for drunkenness but the record then is clear to 1958 after which he was arrested eight more times for being drunk. 19-1-8-2

During the year before his death, Crick worked for

Ralph Hockett Buick, Pontiac, Olds and GMC Sales at Greenfield. 19-1-8-3

"We became close friends," Hockett said yesterday. "He was a handy man but practically ran the place except for sales. I guess he died with a key to the front door in his pocket." 19-1-8-4

"He had saved up several hundred dollars before that last year," Hockett said, "but I expect he drew it out to get drunk on." 19-1-8-5

In earlier days, Crick operated his own painting and contracting business, but when his drinking began to interfere with his business and the financial pressure became too great, Mrs. Crick divorced him. 19-1-8-6

In the winter of 1963-64, Crick worked for the Volunteers of America, a national religious and welfare organization, where he ran the paint shop where donated furniture was refinished. He was described by the director as "the best refinisher we ever had." 19-1-8-7

Crick was the father of three daughters and a son. One daughter is a registered nurse and is married to the sales manager for a leading automobile dealer. Two other daughters are married to a bank clerk and a factory worker. His son works for an insurance company. 19-1-8-8

"He always was real good with the kids and was a bit strict," Mrs. Crick said.

"He visited me just before that last drunk," she said sadly. 19-1-8-9

Exhibit 20 (to Complaint Paragraph 20).

Complaint Exhibit 20 (Tr. 73; 5269; SR 63; SE 8478) is a copy of an article published on the front page on Monday, November 15, 1965, with a four-column headline, "Evidence Delayed In Jail Probe", and reads as follows:

> Evidence in the death of Marion County Jail inmate Daner Crick will not be presented to the Grand Jury until Wednesday, so the probe of alleged jail brutality may extend into next week, the fifth week, officials said last night. 20-1-2-1
>
> James E. Bath, deputy prosecutor in charge of the jury, said about 120 persons already have testified and there is no indication how many more may be called. 20-1-3-1
>
> "This probe is self-perpetuating," he said. "Each new piece of evidence seems to lead to more witnesses." 20-1-3-2
>
> Although the jury's jail report will be delayed, the regular jury report will be issued at 2:30 p.m. today in Criminal Court. 20-1-4-1
>
> Crick, 62 years old, died July 14 of natural causes, but there is strong evidence his illness was caused by brutality or neglect. He had suffered two broken ribs. 20-1-4-2
>
> The evidence includes a signed statement from Denzil Neville Jr., 22, an inmate at the Indiana State Penal Farm at Putnamville, who identified a photograph of Crick as the man he saw left naked, dirty and sick on the cement floor of a basement cell in the old county jail. 20-1-4-3
>
> The evidence was ready for the jury last Friday but was not presented because of a mixup. It then was to come before the jury today, but one juror will be absent so the prosecutor's office delayed the session until Wednesday. 20-1-4-4
>
> "The jury can hear evidence with only five of its six members present, but I think they all should hear

all the evidence on an investigation as important as this one," Bath stated. 20-1-5-1

Since the probe started the jury has heard from dozens of former jail inmates who have told of beatings by deputies, mistreatment, and other incidents. 20-1-5-2

The investigation began after The Indianapolis Star revealed a statement from an inmate, Charles P. McAdams, that he saw another inmate, Elmer L. Reagan, beaten by a sheriff's sergeant. Reagan later died of pneumonia brought on by the beating. 20-1-5-3

McAdams later repudiated the statement after he was seized by sheriff's deputies and interrogated twice. He then was rearrested and was made a jail trusty. However, at least four persons have stated that McAdams told them of Reagan's beating. 20-1-5-4

Exhibit 21 (to Complaint Paragraph 21).

Complaint Exhibit 21 (Tr. 74; 5270; SR 64; SE 848) is a copy of a front page article published on November 16, 1965, which carried a two-column headline, "Inmates Caged In Old Jail, Deputy Charges," and reads as follows:

Mental patients and alcoholics held in the old Marion County Jail often were cooped in a small cage in the basement "like animals," a deputy charged last night. 21-1-7-1

At times as many as eight inmates were locked in an 8-foot by 12-foot cage and "they howled and fought like animals," the deputy said. 21-1-7-2

The Marion County Grand Jury, meanwhile, received evidence yesterday in the death of an inmate, Daner Crick, 62, who died July 14 of natural causes but had suffered two fractured ribs. 21-1-8-1

The evidence was presented to the panel, probing brutality at the jail, by Bethel E. Gaither, chief investigator for the Marion County coroner's office. 21-1-8-2

It included two statements from a former inmate, Denzil Neville, Jr., who has identified Crick as the

prisoner he said was left naked, dirty and sick on the cement floor of a basement cell in the old jail.

The evidence was given to James E. Bath, deputy prosecutor in charge of the jury. The panel will not reconvene until tomorrow because a juror is absent. 21-1-8-3

The deputy who offered the statements about jail treatment requested he not be identified, but he already has testified before the jury. 21-1-8-4

Holding mental patients in the jail has been criticized sharply for some time, and in the regular 1965 session of the Indiana General Assembly, a bill which would have prohibited holding patients in the jail was introduced. 21-1-8-5

But the measure was killed by the Democratic-controlled Affairs of Marion County Committee in the House of Representatives. 21-1-8-6

The deputy said he complained to his sergeant about the treatment. He said the sergeant also disapproved, but "we couldn't do anything."

Some of the drunks suffered from delirium tremens, the deputy said. 21-1-8-7

The cage, where they often were held, "had no toilet facilities and the floor was covered with filth." He said the cage was cleaned only 21-1-8-8 when the grand jury was scheduled to visit the jail. 21-16-4-1

"We'd hear they were coming about three days ahead of time and then the jail trustees would work all the time cleaning up the basement and the rest of the jail to make a good impression." 21-16-4-2

The deputy also was critical of the new jail operation. The new jail, partially completed, has been opened for several months. 21-16-4-3

The deputy said only one floor of the new structure actually is finished and almost 400 prisoners were jammed into space designed for 120 prisoners. 21-16-4-4

(Sheriff Robert H. Fields admitted last week that

the new jail is overcrowded and said it probably would be until it is finished.) 21-16-4-4

The deputy also scored the food served to prisoners, as did a former prisoner released from jail last week. 21-16-4-5

About 120 persons have testified before the jury since the jail brutality probe started after another inmate signed a statement charging that Elmer L. Reagan, held on a drunkenness charge, was beaten and kicked by a jail sergeant several weeks before he died Aug. 7 of pneumonia brought on by beating injuries. 21-16-4-6

Exhibit 22 (to Complaint Paragraph 22).

Complaint Exhibit 22 (Tr. 75; 5271; SR 65; SE 850) is a copy of a front-page article published on November 17, 1965, which carried a small 8-column headline, "Judge Offers 5-Point Jail Reform," a one-column sub-headline, "Propose Fewer Ill Inmates," and reads as follows:

A five-point program to reduce the number of alcoholics and mental patients held in jail and provide a new system for investigating alleged brutality in the Marion County Jail and city lockup is planned by Judge John C. Christ, it was learned yesterday. 22-1-1-1

Christ, judge of Municipal Court, Room 5, said he will call a special meeting of the three other misdemeanor court judges to discuss the program. 22-1-1-2

Christ's plan follows the sweeping Marion County Grand Jury investigation of the deaths of two county jail inmates and charges by more than a dozen other prisoners and former prisoners who have told of deputies beating inmates. 22-1-1-3

The program calls for:

1. A review of the procedure for jailing and caring for all prisoners in the county jail and city lockup. 22-1-1-4

2. Formulation of a policy to insure that immediate medical care or hospitalization can be provided for any mental patient or alchoholic held in jail. 22-1-1-5

3. A plan to segregate mental patients and alcoholics from other prisoners. 22-1-1-6

4. A plan which would provide investigation of complaints of jail or lockup mistreatment by an impartial board or panel, rather than by police or deputies. 22-1-1-7

5. Agreement on a procedure for having a court-appointed doctor or psychiatrist examine sick, injured, mentally ill or alcoholic prisoners before they appear in court. 22-1-1-8

Christ said he already has discussed the problem with the other Municipal Court judges, William T. Sharp, Ernie S. Burke and Harry F. Zaklan. 22-1-1-9

"All of them agree that the jail just isn't the place for those people," he said. "And all of the judges have shown interest in working out a plan so something can be done about their treatment." 22-1-1-10

Christ long has been a critic of the policy of jailing persons who are chronic alcoholics or are awaiting preliminary mental examinations. 22-1-1-11

The two men whose deaths in the jail are being probed by the jury both had serious drinking problems. 22-25-4-1

One man, Elmer L. Reagan, died Aug. 7 of pneumonia brought on by beating injuries, and the other, Daner Crick, died July 14 of pneumonia but had suffered two fractured ribs and, according to the statement of another prisoner, had been left naked, dirty and ill on the concrete floor of a basement cage. 22-28-4-2

Christ said alcoholics and mental cases need medical and psychiatric help and are not criminals. 22-28-4-3

He also pointed out that the new, partially completed county jail does not contain space for care and treatment of inmates who may be mentally ill. 22-28-4-4

Probes of mistreatment complaints should be carried out by independent bodies because "too many times we are faced with the problem or having a police agency investigate itself in an allegation of mistreatment or brutality," the judge said. 22-25-5-1

In the current investigation, Sheriff Robert H. Fields ordered his deputies to pick up and question the inmate, Charles P. McAdams, who had signed a statement that Reagan was beaten by a jail sergeant. 22-28-5-2

After he was interrogated McAdams repudiated the statement, but since then at least four persons have said McAdams had told them that Reagan was beaten by a deputy. 22-28-5-3

"I don't want to criticize anyone or any department," Christ said, "but I believe we need objective investigations into alleged brutality by impartial agencies." 22-28-5-4

Christ said the Indianapolis Board of Public Safety could check complaints of mistreatment by city police while the office of Prosecutor Noble R. Pearcy could check complaints about the county jail. 22-28-5-5

The need for a physician to examine alcoholics or mental cases was recognized by the Marion County Council which provided a salary of $10,000 for the doctor in the 1966 budget. 22-28-5-6

said, persons found to need either medical or psy-

On the basis of the doctor's examination, Christ said, persons found to need either medical or psychiatric aid would be given immediate care and not held in jail. 22-28-5-7

Christ proposed that a section of the city lockup which presently is not used be used as a treatment center for alcoholics or observation area for inmates believed to be mentally ill. 22-28-5-8

The grand jury did not meet yesterday but will resume the probe today. 22-28-5-9

Exhibit 23 (to Complaint Paragraph 23).

Complaint Exhibit 23 (Tr. 76; 5272; SR 66; SE 853) is a copy of a front-page article published on November 18, 1965, which carried a one-column headline, "Grand Jury Jail Probe Nears End," and reads as follows:

> After hearing testimony from nearly 130 witnesses, the Marion County Grand Jury investigation of alleged county jail brutality—one of the largest local jury probes on record—is expected to end Tuesday, a deputy prosecutor said yesterday. 23-1-7-1
>
> Nine persons testified yesterday and two more are scheduled to appear before the jury today. 23-1-7-2
>
> James E. Bath, the deputy prosecutor, said he expects the panel to wind up the four-week probe with deliberation tomorrow and Monday and to submit a special report—along with indictments if any are returned—to the Criminal Court judges on Tuesday.
>
> Among persons who testified yesterday was Capt. Richard Scott, the chief jailer. 23-1-7-3
>
> Deputies Roscoe E. Kennedy, Ronald Henry and Robert Alfrey also testified along with Judge William T. Sharp of Municipal Court, Room 4, and Policewoman Barbara Handley, formerly in charge of handling mental patients for police. 23-1-7-4
>
> Three Indiana State Penal Farm inmates, Thomas J. Duffy, Charles Bradley and Denzil Neville Jr., testified. All are former jail inmates. 23-1-7-5
>
> Since grand jury action is secret, the outcome of its probe will not be known until next week, but Bath and John T. Davis, also a deputy prosecutor, said the jury could return a report on jail conditions or issue indictments along with a report. 23-16-4-1
>
> In an investigation of conditions at the Indiana Girls School last year, the jury returned a report criticizing the administration of the school, but did not mention names in the report or issue indictments. 23-16-4-2

Seventy-five persons testified in the Girls School probe. 23-16-4-3

The jail investigation includes the deaths of two inmates, Elmer L. Reagan and Daner Crick, and charges of beatings by deputies undergone or witnessed by more than a dozen other inmates. 23-16-4-4

Reagan died of pneumonia brought on by beating injuries. According to Charles P. McAdams, another inmate, Reagan was beaten by a jail sergeant. McAdams later repudiated the charge but four persons said McAdams told them he had seen a deputy beat a prisoner who later died. 23-16-4-5

Crick died of natural causes but had suffered two fractured ribs. According to evidence he had been left on the floor of a basement cell although he was naked, dirty and ill. 23-16-5-1

There also have been complaints of mistreatment and bad conditions, including a statement yesterday from an inmate who told The Indianapolis Star that prisoners refused to eat two meals recently because some inmates had not received needed medical attention. 23-16-5-2

The inmate, who asked that he not be identified, said a doctor was called soon after the inmates refused to eat. 23-16-5-3

Capt. Scott said he knew of no such incident. But Scott said prisoners in one cell block recently refused to eat because sufficient trays had not been provided. 23-16-5-3

Exhibit 24 (to Complaint Paragraph 24).

Complaint Exhibit 24 (Tr: 77; 5273; SR 67; SE 856) is a copy of an article published on page 31 on November 19, 1965. This article carried a three-column headline, "Grand Jury Concludes County Jail Investigation," and reads as follows:

The Marion County Grand Jury yesterday concluded

the hearing of evidence in the probe of alleged brutality and mistreatment of prisoners in the Marion County Jail, after one of the longest and most grueling probes on grand jury records here. 24-31-6-1

A deputy coroner, Dr. Marvin D. Dziabis, was the only witness to testify yesterday. He brought the total number of witnesses to 129. 24-31-6-2

Dr. Dziabis performed the autopsy on jail inmate Daner Crick, who died July 14 of pneumonia. A former inmate of the jail said Crick lay dirty, sick and untended in the basement of the old jail for two days before he was taken to the hospital. 24-31-6-3

Deputy prosecutor James E. Bath said the jury will begin its deliberation on the jail probe today and possibly will work Saturday in an attempt to reach a conclusion which will result in a special report of the grand jury next Tuesday. 24-31-6-4

"They took their work home with them last night in an attempt to reach a conclusion," Bath said. 24-31-6-5

The jail probe was sparked Oct. 26, when a prisoner, Charles P. McAdams gave a statement in which he said he had seen a deputy sheriff beat a prisoner who later died. 24-31-6-6

However, McAdams repudiated his statement after he was picked up and questioned by deputy sheriffs before and after his testimony before the grand jury. 24-31-6-7

But four other persons, including McAdams' girl friend, Mrs. Lura Kimbley, said McAdams told them he had seen a deputy beat a prisoner who later died. 24-31-6-8

Originally, McAdams said he saw a sheriff's sergeant beat Elmer L. Reagan on July 14, after the deputy and the inmate argued about some medicine. Reagan died in Marion County General Hospital Aug. 7 of pneumonia brought on by 15 broken ribs. 24-31-6-9

When The Star disclosed Reagan's death, sheriff's deputies said Reagan had been beaten by a mental

patient, who was later charged with second degree murder. But when The Star learned of Reagan's death, no reports existed regarding Reagan's beating, his hospitalization or his death, and no investigation was in progress. 24-31-6-10

After McAdams repudiated his story, dozens of prisoners and former prisoners came forth to testify regarding acts of brutality and mistreatment they said they saw while inmates of the old jail. 24-31-7-1

Spokesmen for the prosecutor's office said the grand jury's report could contain criticisms of the jail administration, as they did in an investigation of the Indiana Girls School, without mentioning names or returning indictments. 24-31-7-2

Or, the grand jury could return indictments along with a special report, if sufficient evidence had been presented to support the charges. 24-31-7-2

Exhibit 25 (to Complaint Paragraph 25).

Complaint Exhibit 25 (Tr. 78; 5274; SR 68; SE 858) is a copy of a front-page article published on November 20, 1965, which carried a two-column headline, "2d Judge Joins Move To Alter Set-Up At Jail," and reads as follows:

A Municipal Court judge said yesterday he approves of a fellow judge's plan to reduce the number of alcoholics and mental patients held in the Marion County Jail. 25-1-7-1

Judge William T. Sharp of Municipal Court, Room 4, said the plan's other provision, which calls for a new system of investigating alleged brutality in the jail and the city lockup, has his full support. 25-1-7-2

The plan was proposed Wednesday by Judge John C. Christ of Municipal Court, Room 5. 25-1-7-3

Christ's program calls for: 25-1-7-4

1. A review of the procedure for jailing and caring for all prisoners in the county jail and the city lockup. 25-1-7-5

2. Formulation of a policy to insure that immediate medical care or hospitalization can be provided for any mental patient or alcoholic held in jail. 25-1-8-1

3. A plan to segregate mental patients and alcoholics from other prisoners. 25-1-8-2

4. A plan which would provide investigation of complaints of jail or lockup mistreatment by an impartial board or panel, rather than by police or deputies. 25-1-8-3

5. Agreement on a procedure for having a court-appointed doctor or psychiatrist examine sick, injured, mentally ill or alcoholic prisoners before they appear in court. 25-1-8-4

Sharp, who commended The Indianapolis Star for baring reports of alleged brutality and mistreatment of prisoners and trying to rectify the situation, declared: 25-1-8-5

"This entire situation at the jail is one which has needed exposure for a long time." 25-1-8-6

Christ's plan and Sharp's indorsement follow the penetrating Marion County Grand Jury probe of the deaths of two county jail inmates and charges by more than a dozen other prisoners and former prisoners that deputies beat inmates. 25-1-8-7

The grand jury is expected to make a special report on its findings Tuesday. 25-1-8-8

Judge Christ said that Judge Sharp and the other two Municipal Court judges, Ernie S. Burke and Harry F. Zaklan, have been invited to attend a meeting Wednesday to push the reform program. 25-1-8-9

Sharp declared that having a doctor or psychiatrist assigned to the courts would be an invaluable aid to the judges, who are not qualified to determine prisoner's conditions. 25-12-3-1

The move, he said, would reduce sharply the number of persons held for mental examination. Doctors' reports show that a third or half of the persons who pass through his court for mental examinations do not

need them, Sharp explained. The present method often forces a combined stay of more than 80 days in the jail and the overcrowded Marion County General Hospital for those awaiting mental examination, he said. 25-12-3-2

Christ long has been against jailing of persons who are chronic alcoholics or are awaiting mental examinations. 25-12-3-3

Elmer L. Reagan and Daner Crick, the two men whose deaths in the jail are being probed by the jury, both had serious drinking problems. 25-12-3-4

Exhibit 26 (to Complaint Paragraph 26).

Complaint Exhibit 26 (Tr. 79; 5275; SR 69; SE 861) is a copy of a front-page article published on November 21, 1965, which carried a six-column headline, "Other Cities Found A Way—Treatment, Not Jail, Urged For Alcoholics," and reads as follows:

Other cities have found cheaper effective ways of handling alcoholics and drunkenness offenders than throwing them in jail.

Several authorities on alcoholism spoke out after two men arrested for drunkenness died of pneumonia in Marion County General Hospital after being transferred from Marion County Jail. 26-1-1-1

According to evidence submitted to the Marion County Grand Jury, neither of the inmates received adequate medical attention in the jail, and one of them allegedly was beaten by a sheriff's deputy. 26-1-1-2

The Rev. Chester G. Minton, an Episcopal priest and a consultant to Municipal Court judges for the Central Indiana Alcoholism Clinic, said that Chicago, Detroit, Boston, Washington and New York are among cities which send drunkenness offenders to rehabilitation centers. 26-1-2-1

Father Minton says the centers are proving cheaper and more effective in dealing with alcoholics. 26-1-2-2

Arthur D. Pratt, founder and president of 29 Flynn Christian Fellowship houses for alcoholics in the United States, said the rehabilitation centers, as the one in Boston, for instance, keeps an alcoholic in detention just long enough to "dry him out." 26-1-3-1

After two or three days in detention, the alcoholic is talked to by social workers and employment counselors and sent looking for work. 26-1-3-2

In the meantime, he is given good food and vitamins to build his health. 26-1-3-3

"This saves the city of Boston appreciably," Pratt said. 26-1-3-4

"The center is cheaper to run than any jail and the people are only spending a week instead of 30 days or more in the care of the city," he said. 26-1-4-1

"The consequences are that there is an appreciable saving involved and instead of building up a group of resentful people, you form a better relationship with them," he said. 26-1-4-2

Pratt admits that the alcoholics tend to return time and time again, just as they return to jail time and time again in Indianapolis. 26-1-4-3

"But we must understand that many alcoholics actually are counting on refuge in the county jail or on the state farm," Pratt said. 26-1-4-4

"The rehabilitation center tends to undermine their dependency pattern because it does not provide nearly the amount of security and supportive help that jails and state farms do," he added. 26-1-5-1

"Most important," he said, "the Boston plan is a positive approach to the man's problem." 26-1-5-2

Capt. Daniel Boyer, director of the Salvation Army's Harbor Lights Program, pointed out that no amount of punishment will stop an alcoholic from drinking. 26-1-5-3

"I haven't seen anybody it (jail) has helped yet," he said. 26-1-5-4

Alcoholics can't stop drinking without proper help,

he said, because of the physical problems of blood cell adaptation which causes them to absorb and retain more alcohol than blood cells in the average person. 26-1-6-1

Mentally, Pratt said, there is an obsession to drink which is similar to many other obsessive compulsive illnesses. 26-1-6-2

"And probably most important of all," Pratt said, "there is a profound feeling of defeat and despair and the person has given up hope of fulfillment of success and is literally retreating from responsibility and hope for personal success." 26-1-6-3

Municipal Court judges are taking a new look at the problems of jailing alcoholics and persons with other mental illnesses. 26-1-7-4

A plan proposed recently by Judge John C. Christ of Municipal Court, Room 5, calls for immediate medical attention for any mental patient or alcoholic held in jail and a new procedure for the medical and/or psychiatric examination of persons held in jail. 26-23-3-1

Judge Christ would also segregate mental patients and alcoholics from other prisoners. 26-23-3-2

He has been joined by Judge William T. Sharp of Municipal Court, Room 4, who, with Christ, indorses an impartial investigation of alleged brutality in the county jail and city lockup. 26-23-3-3

The County Grand Jury is expected to make a special report Tuesday on its findings in its extensive investigation into alleged brutality in the County Jail. 26-23-3-4

The State of Indiana operates a treatment center for alcoholics at Central State Hospital, but patients must be sober for admittance so they can sign an agreement to stay at least 30 days and attend lectures, movies, discussions and group therapy. 26-23-3-5

There is also outpatient treatment, but before anyone can be helped, they must admit they have a drinking problem, an admission the wettest drunk is reluctant to make. 26-23-3-6

Detention in jail services to "dry out" an alcoholic, but without proper medical supervision, an alcoholic sobering up in jail may suffer delirium tremens resulting from starvation. 26-23-3-7

Alcoholics usually have sustained themselves with little but alcohol and without even that to supply energy, the alcoholic's brain stops functioning properly and the alcoholic begins to suffer from wild hallucinations. 26-23-3-8

In this condition, an alcoholic can be hard to handle and may be abusive in his language. 26-23-3-8

Jailers, untrained to handle the situation, tend to avoid the repusive drunk and in some cases have been known to react to a drunk's delirious remarks by striking him. 26-23-3-8

Judges themselves have not admitted it for publication, but privately they and court observers say there is now little that can be done in Indianapolis except to jail an alcoholic. 26-23-3-9

Without money or a place to stay, many not-so-drunk but well-known alcoholics actually seek refuge in jail or on the state farm as cold weather approaches. 26-23-3-10

Drunk affidavits in Municipal Court last month, for instance, swelled to 720. 26-23-3-11

Several observers are hoping that either St. Vincent's Hospital or Sunnyside Sanitarium can be converted into a rehabilitation center for alcoholics if and when they are abandoned by their present users. 26-23-3-12

Exhibit 27 (to Complaint Paragraph 27).

Complaint Exhibit 27 (Tr. 80; 5276; SR 70; SE 863) is a copy of a front-page article published on November 22, 1965, which carried a one-column headline, "Jury Reports Tomorrow On County Jail," and reads as follows:

The Marion County Grand Jury met in closed session for two hours yesterday and for four hours Satur-

day, preparing to report tomorrow on its probe of alleged brutality in the Marion County Jail. 27-1-5-1

The final meeting before tomorrow's 10:30 a.m. report is to be held today to conclude what was described by Deputy Prosecutor James E. Bath, in charge of the grand jury, as "the biggest, longest, most grueling investigation in memory." 27-1-5-1

A total of 129 witnesses have been heard by the jury in its investigation of two jail deaths and inmates' charges that they were beaten by deputies. 27-1-5-2

Exhibit 28 (to Complaint Paragraph 28).

Complaint Exhibit 28 (Tr. 81; 5277; SR 71; SE 813) is a copy of a front page article published on November 23, 1965, which carried a two column headline, "Threatened LBJ To Avoid Jail Here: Squillan", and reads as follows:

New York City—Robert F. Squillan said yesterday he threatened the life of President Lyndon B. Johnson in order to avoid return to Indiana and possible imprisonment in the Marion County Jail. 28-1-7-1

In a notarized statement to his attorney, William C. Erbecker, Squillan reported he was threatened and harassed by an investigator for the sheriff's department to the extent that he "blew my top." 28-1-7-2

Squillan's statement came on the eve of a Marion County Grand Jury report on charges of brutality at the jail which is scheduled to be returned this morning. 28-1-8-1

Squillan specifically waived his right of privileged communication with his attorney and authorized Erbecker to release his statement, which was notarized by Anthony A. Euk, lieutenant in charge of probation and prison employes at the Federal Detention Headquarters here. 28-1-8-2

Squillan said Sheriff's Sgt. Felson Bowman repeatedly threatened him with imprisonment for parole violation and bribery in order for the sheriff's depart-

ment to obtain evidence against Sgt. Charles W. Haine. 28-1-8-3

Squillan said he signed a statement against Haine prepared by Sgt. Bowmair because of "being afraid of losing everything that I had worked hard for after my return." 28-1-8-4

Squillan, a Brooklyn (N. Y.) resident, was on probation and had been moved up from $60 a week to $100 a week in five months on his job until the sheriff's investigator entered the picture, Squillan said. 28-1-8-5

Bowman came to see him and called him several times and demanded he testify against Haine at a Sheriff's Merit Board hearing, repeating the threat to have him jailed, Squillan said. 28-24-2-1

"The thought of going back to that jail with its miserable conditions led me to start taking drinks, staying alone and becoming angry with my own family and a generally miserable attitude," Squillan said. 28-24-2-2

"I lost my appetite and became quarrelsome and frustrated and finally, in desperation, I fled the country and went to Frankfurt, Germany, with the avowed purpose of defecting to Soviet Russia," Squillan said. 28-24-2-3

He related his travels subsequently took him to Bonn and Berlin in Germany, and to Rome. He decided against defecting. 28-24-2-4

Squillan said that he had been bothered by his dishonorable discharge from the Army and had once written to President Johnson in attempt to have the discharge changed to honorable. He said he had received a letter in return from a general, saying the change would be impossible. 28-24-2-5

While he was in West Berlin, Squillan said, he read a newspaper story which reported the case of another man discharged 13 years ago in which President Johnson had converted the discharge from dishonorable to honorable. 28-24-3-1

Squillan said he read the story over "40 or 50 times", and decided to write to the FBI expressing his feelings. 28-24-3-2

Squillan in the letter threatened President Johnson. 28-24-3-3

After going to the American Consul in Rome for a loan to return to the United States, Squillan was returned and arrested by the FBI and Secret Service on his arrival at Kennedy International Airport here. 28-24-3-4

Speaking of the letter, Squillan said, "I was not in my right mind at the time and was so crazed by the thought of the so-called justice that I just wanted to end it all. I knew that the Federal government would arrest me for this letter and this is what I wanted for I did not want to go back to Indiana . . ."

Squillan said he wants Erbecker to request a psychiatric examination for him. 28-24-3-5

Squillan received probation and a suspended sentence of 1-to-40 years from Judge Eugene M. Fife of Marion Criminal Court, Division 1, on a robbery charge in March, 1965. 28-24-3-6

Sgt. Haine was alleged by the sheriff's department to have taken $600 from Squillan and $200 from Squillan's mother, Mrs. Florence Dagrossa in exchange for obtaining the suspended sentence. 28-24-3-7

Haine was discharged by the Sheriff's Merit Board Oct. 26 after he was found guilty of taking the money from Mrs. Dagrossa and numerous other charges. Squillan did not testify before the merit board but had been returned to Indianapolis earlier to testify before the grand jury. 28-24-4-1

Squillan said in yesterday's statement "Sgt. Charles Haine could not conceivably have had anything to do with my receiving probation." 28-24-4-2

Squillan has a hearing scheduled in Federal Court here Wednesday. 28-24-4-3

In Indianapolis, the grand jury wound up its investigation of alleged brutality at the jail yesterday after

hearing 129 witnesses in the four-week probe. 28-24-4-4

James E. Bath, deputy prosecutor in charge of the grand jury, said yesterday he could not say whether the jury report will include any indictments. 28-24-4-5

Such information is secret, by law, until the report is made to the Criminal Court, Bath said. Any revelation of indictments or the lack of them would be a law violation. 28-24-4-6

Exhibit 29 (to Complaint Paragraph 29).

Complaint Exhibit 29 (Tr. 82-83; 2642; SR 72-73; SE 199) is a copy of three front-page articles and a front-page editorial published on November 24, 1965. One of the front-page articles carried a large 8-column headline, "Judge Charges Whitewash," a four-column subheadline, "Jury Dismissal Of Jail Abuse Reports Widely Criticized," and reads as follows:

Criticism mounted last night in the wake of a Marion County Grand Jury report which "exonerated" the sheriff's department of brutality charges. 29-1-5-1

Judge Eugene M. Fife Jr. of Criminal Court Division 1, charged the report was a "whitewash" of the situation at the county jail. 29-1-5-1

Dr. Robert G. Risk, president of the Indiana Civil Liberties Union, expressed surprise at the reports and said, "I feel quite sure there has been some brutality in the jail." 29-1-5-2

After reading the grand jury's four-page report, Judge Fife said, "This report is obviously a whitewash."

Fife predicted the report will "result in a huge public outcry." 29-1-5-3

Fife and Judge Saul I. Rabb of Criminal Court, Division 2, are the presiding judges over the grand jury and the jury made its report to them. 29-1-5-4

Fife said he did not know what could have motivated the grand jury to issue such a report "unless they were controlled by the prosecutor all the way." 29-1-5-5

Marion County Prosecutor Noble R. Pearey and Sheriff Robert H. Fields are close personal friends and political allies. 29-1-5-6

The Prosecutor's office assists and guides the jury throughout its investigations and consequently can play an enormous part in determining the direction any probe will take and its conclusions. 29-1-5-7

The special report of the grand jury said, "In an exhaustive study . . . of conditions at the Marion County Jail, we have found no evidence to substantiate the allegations concerning brutality by the Marion County Sheriff's deputies." 29-1-5-8

Only criticism of the sheriff's department by the jury was directed at use of tear gas on one prisoner. 29-1-5-9

"We cannot condone the use of tear gas to quell one unruly individual prisoner," the jury said. "We feel that such a drastic measure should be used only in the event of a riot or major disturbance." 29-1-5-10

Judge Fife pointed out that the jury chose to believe one-half of the original statement of Charles P. McAdams, that relating to the tear gas case, but chose to disbelieve the other half, that relating to the beating of Elmer L. Reagan, who died of pneumonia brought on by 15 broken ribs. 29-1-5-11

Sgt. Donovan King was suspended indefinitely by Fields for firing the tear gas charge at a soldier prisoner in the jail after McAdams made his statement. 29-1-6-2

The jury indicted William A. Brown, former mental patient at the jail, yesterday for second-degree murder in the death of Reagan. 29-1-6-3

McAdams signed a notarized statement Oct. 22 in which he said he saw Reagan severely beaten by a deputy sheriff. The sheriff's department contended

the beating was inflicted by Brown. No explanation was given as to why Reagan, who was charged with drunkenness, was put in the same cell with a mental patient. 29-1-6-4

"Bethel E. Gaither, Marion 29-1-6-5 County coroner's office chief investigator, who took McAdams' original statement and presented it to the grand jury, was angry at the report. 29-12-1-1

"It's scandalous," he said of the report, "and regardless of their actions, I've been left with an unexplained murder. They will never prove that William A. Brown killed Elmer Reagan." 29-12-1-2

McAdams repudiated his original statement after he was questioned at lenght at the sheriff's office both before and after his appearance before the grand jury. 29-12-1-3

"I don't care what the grand jury says," Gaither said, "McAdams told the judge (Fife) and I the truth. That man (McAdams) isn't smart enough to make up a lie like that." 29-12-2-1

Gaither also took exception to a part of the report which noted that McAdams had been given a lie detector test regarding his statement. 29-12-2-2

"First of all, a lie detector test is worthless," Gaither said. "It isn't admissible in court. And, it is customary to have the accused persons take lie tests, if they are given at all, not the prosecuting witness." 29-12-2-3

Judge Fife expressed suprise at the brevity of the jury report. 29-12-2-4

"I believed that after nearly four weeks of investigation and 129 witnesses that I would surely have a more comprehensive report," he said. 29-12-2-5

Gaither said in disbelief, "The grand jury said they questioned 129 persons—and all of them are liars! Baloney." 29-12-2-6

Fife said, "It is apparent from reading the report that the grand jury did not rely heavily on the testimony of convicts, but the testimony of convicts did

not stop the prosecutor from proceeding in the police bribe cases, and the words of convicts did not prevent the sheriff from discharging Sgt. Charles Haine from his department." 29-12-3-4

Fife said the jury should either have totally believed McAdams' statement or totally rejected it. 29-12-3-2

Either that man's statement is entirely true or entirely false," Fife said. "That is a fundamental of law." 29-12-3-3

Memebers of the grand jury were Mrs. Constance Dietz, 38 years old, 3624 East 42d Street, foreman; Mrs. Dorothy McClure, 32, 5227 Washington Boulevard; Mrs. Dorothy J. Smith, 39, 6207 Breamore Road; Charles Chapman, 59, 3354 Hovey Street; Mrs. Ella Dickerson, 56, 924 Camp Street, and Mrs. Anne L. Taflinger, 46, 335 North Graham Avenue. 29-12-3-4

Meanwhile, Judge Rabb said he intends to begin an investigation in an attempt to learn whether or not secret grand jury information in regard to the jail probe was leaked before the grand jury presented its report to him and to Judge Fife. 29-12-3-5

Rabb said he intends to meet today with Judge Fife to plan a course of action, based on a radio news broadcast made Monday afternoon in which the commentator quoted "usually reliable sources" as saying there would be no indictments returned in the grand jury probe of the Marion County Jail." 29-12-3-6

Arthur L. Derringer, Indianapolis truck driver who had testified he was beaten by deputies in the jail, said he was "stunned with disbelief and dismay" when he received news of the jury report. 29-12-3-7

"Who do you go to for justice if you're beaten up?", Derringer asked. 29-12-3-8

Derringer, 46 years old, said he was "kicked and beaten" by five or six deputies in the basement of the old jail Jan. 10. He said he suffered injuries to his head and had black-and-blue heel prints on his stomach for several days after the alleged beating. 29-12-3-9

The jury also had no criticism of the sheriff's department in the death of Daner Crick, who died of pneumonia in Marion County General Hospital after having been left lying "sick, naked and dirty" for two days in the jail. 29-12-3-10

The jury said Crick died after he had been in Marion County General Hospital about seven hours. 29-12-3-11

"Medical testimony established the man had two recently fractured ribs," the report sated. "However, the medical testimony disclosed conclusively that the two rib fractures did not contribute to causing his death. The death of Crick, a man of advanced years who suffered from alcoholism was caused by two long standing conditions: acute bacterial pneumonia and chronic emphysema." 29-12-4-2

The jury did recommend legislation to provide that persons suspected of being mentally ill be kept in hospitals instead of county jails. 29-12-4-3

Dr. Risk said the ICLU has a "police action committee" which has been starting work on the general subject of brutality. He said the group has not yet gone into the allegations against the sheriff's department made in recent weeks. 29-12-4-4

"You'll hear more from us on this subject," Risk vowed.

Barton Hunter, chairman of the police action committee, criticized the way McAdams was questioned before and after the grand jury appearance. "This seems to me a disturbingly questionable procedure," he said. 29-12-4-5

William C. Erbecker, Indianapolis attorney, said he was studying the possibility of violation of the civil rights of both McAdams and Robert F. Squillan, a key figure in the sheriff's case against Sgt. Haine, who now is charged with writing a letter threatening the life of President Lyndon B. Johnson. 29-12-4-6

In order to initiate an investigation of civil rights

violation, a complaint must be given the FBI, which is required to send all information in the case to the Civil Rights Division of the Justice Department, according to Richard P. Stein, United States District Attorney. 29-12-4-7

After they sift it and if they decide a full investigation is warranted, they would tell the FBI here to make one. When a report of this investigation is completed, it goes back to the division, where a final determination is made whether complainer's rights have been violated, Stein said.

Mrs. Dietz said the grand jury composed the report without help from the prosecutor's office. 29-12-4-8

Sheriff Fields said, "I think that the grand jury should be highly commended for the long and arduous investigation it conducted." 29-12-5-1

"Every member of the public should in some measure express their appreciation to these citizens." 29-12-5-2

Pearcy stressed it was the jury's own report, saying: "I want to make it clear that the report was left 100 per cent in their care. The grand jury should be commended." 29-12-5-3

Former prosecutor Phillip L. Bayt said that from what he had read in newspapers and heard "it would appear that the grand jury would at least recommend that the sheriff's office immediately adopt corrective procedure to prevent such happenings in the future." 29-12-5-4

H. Dale Brown, Marion County Republican chairman, said "It would seem that further and continuing grand jury investigation is desirable." 29-12-5-5

Attorney Judson F. Haggerty, former Marion County Democratic Chairman, said he thought Robert H. Fields was "one of our best sheriffs." Haggerty added, "There may have been some neglect but I believe it has been kept to a minimum." 29-12-5-6

Another of the front-page articles in Complaint Exhibit 29 carried a three-column headline, "Grand Jury's Findings In Jail Brutality Probe," and reads as folows:

> This is the text of the special report made yesterday by the Marion County Grand Jury to Judges Saul I. Rabb of Marion County Criminal Court, Division 2, and Eugene M. Fife Jr., Marion County Criminal Court, Division 1:
>
> "The Marion County Grand Jury desires to return herewith its Special Report:
>
> "In an exhaustive study by the Marion County Grand Jury of conditions at the Marion County Jail, we have found no evidence to substantiate the allegations concerning brutality by the Marion County Sheriff's deputies.
>
> "After listening to almost four weeks of testimony of truths, half-truths, and in many instances untruths, it became evident that an intelligent individual, with a knowledge of the evidence we have heard, would reject these allegations of brutality. Unfortunately, the public has not had access to this needed information. There may have been some isolated instances where a deputy's judgment as to the reasonable force required under the circumstances might be questioned. However, we have not heard evidence of a single incident where in our opinion a deputy clearly used unreasonable force, with the exception of an instance when tear gas was used on an individual prisoner. We cannot condone the use of tear gas to quell one unruly individual, we feel that such a drastic measure should be used only in the event of a riot or major disturbance.
>
> "We listened carefully and patiently to a total of one hundred twenty-nine (129) witnesses and we must conclude that the charges of brutality at the Marion County Jail are wholly unfounded.
>
> "The instances of violence we have heard have involved trouble deputies have had booking in a prisoner who was under the influence of alcohol and belligerent,

controlling prisoners who became unruly and violent in cellblocks, struggling with prisoners who for discipline reasons were placed in the old jail's maximum security room, and on one occasion, when the deputies and the riot squad of the Indianapolis Police Department were putting down a large scale riot.

"We have heard testimony of some persons who can be described as being among the worst enemies of society, who have been convicted of crimes of violence and viciousness, who have stated their complaints about the manner in which the deputy sheriffs controlled them in the jail. We find we have no criticism whatever of the judgment of the deputy sheriffs as to the necessary and reasonable force required to handle and control these individuals.

"In a published statement by Charles P. McAdams dated Oct. 22, 1965, an accusation was leveled at a deputy sheriff who was alleged to have brutally beaten an inmate, Elmer Reagan. Testimony of Mr. McAdams, verified by a lie detector test conducted by an Indiana State Police expert, along with the testimony of a great many other witnesses before the Grand Jury, have clearly shown the allegations contained in his original statement of Oct. 22, 1965, are completely false.

"The grand jury seriously considered that an indictment of perjury be placed against Mr. McAdams based on his notarized statement of Oct. 22, 1965. However, the evidence disclosed that Mr. McAdams had not been placed under oath, nor did he swear to the veracity of the statement and its contents. The Notary attested to the signature of Mr. McAdams only. It was on the basis of this legality that an indictment of perjury is unwarranted.

"During the many weeks of our extensive investigation, indisputable evidence has been heard which disproves the claims of brutality committed by deputy sheriffs and the mortal beating of a prisoner by a deputy.

"We inquired also into the death of one Daner

Crick, alias Dean Craig, who was removed from the Marion County Jail about 6:00 p.m. July 13, 1965, and taken to General Hospital. His death occurred after he had been at the hospital approximately seven hours. Medical testimony established the man had two recently fractured ribs. However, the medical testimony disclosed conclusively that the two rib fractures did not contribute to causing his death. The death of Crick, a man of advanced years who suffered from alcoholism, was caused by two long standing conditions: acute bacterial pneumonia and chronic emphysema.

"If the family of an individual believed to be mentally ill will not seek help for him, it often becomes necessary, for a criminal offense, usually the charge of Disorderly Person, to be placed against the individual in order to bring him into custody for a subsequent examination at General Hospital.

"Indiana has no more modern procedures than this for the detention and examination of those believed to be suffering from mental illness. The criminal charge of Disorderly Person is simply the most convenient means the authorities, in almost all instances the Indianapolis Police Department, can find in the law for taking such individuals into custody.

"The Marion County Sheriff's Department is required to confine such individuals at the Marion County Jail for the reason that they are under a criminal charge and have not yet been evaluated to be in fact mentally ill.

"General Hospital has very limited facilities for mentally ill in-patients and it is also understaffed with the psychiatrists, psychologists, social workers and other personnel required for such patients. The beds available for such patients are always filled and vacancies do not occur as frequently as desirable because institutions such as Indiana Central State have problems also with limited facilities and personnel.

"As a consequence, individuals believed to be mentally ill who are being held by the Marion County Sheriff's Department are often confined to the jail

for extended periods of time. If the Sheriff's Department finds itself having custody of a pre-mental prisoner who is even violent and raging and further finds that General Hospital has no space for the prisoner, there is no alternative for the Sheriff's Department but to return the pre-mental prisoner to the jail.

"The old Marion County Jail, which was vacated only a couple of months ago, was originally built to accommodate 125 prisoners. The Marion County Sheriff's Department, however, has had to house as many as 700 prisoners in that building. The building was ancient and the facilities, as reported by many Marion County Grand Jurors in past years were deplorable.

"There were no special cells or facilities of any kind for mentally ill prisoners. These prisoners, by necessity, had to be kept in cellblocks with hardened criminals and the whole range of the prisoner population.

"Most of the cellblocks were in full view of visitors to the jail and some prisoners, such as Reagan and Crick, could not be kept in these cellblocks. These two men would remove their clothing and lay on the floor for long periods of time. Reagan developed pressure sores and abrasions and would remove bandage dressings and would rub his excrement into his sores and abrasions. Other prisoners suspected of being mentally ill would expose their genital organs and urinate through the bars in full view of visitors. Prisoners of this type were kept in what was known as the basement cage.

"Sheriff's deputies are not men trained and experienced in the care and handling of mentally ill persons. Their problems in the management of the old jail were innumerable and we find that under all the circumstances their handling of such mentally ill patients was competent, and we feel they should be commended for their efforts under such impossible conditions.

"We feel very strongly that persons suspected of

being mentally ill should be kept in a hospital and not in a county jail. However, in order to accomplish this it appears that new legislation is required. Such legislation must be the result of study and proposals by medical and legal experts.

"The new Marion County Jail, which is far from completion and being operated at half its ultimate facilities, is already overcrowded.

"In view of the pre-planning along with the able administration by the Sheriff and his department, conditions in the old jail are non-existent in the new one.

"The construction of tile and steel require a minimum of maintenance for ultimate cleanliness. The laundry and kitchen facilities are of the very latest for institutional use.

"More than adequate food is prepared in an immaculate, well equipped kitchen and each inmate receives his partitioned tray of hot food at his cellblock. Menus are planned with the guidance of the United States Bureau of Prisons Manual.

"Sick call cards are filled out by those inmates who have a physical complaint and wish to see a doctor. These cards are gathered and given to the medical assistant who evaluates the prisoners' complaints prior to the doctor's examination.

"If the physical condition warrants treatment, it is given and followed by a prescribed medication to be administered when required. We find no lack of medical attention. In addition, Sheriff Fields has inaugurated a plan whereby two externs will be added to the jail's medical staff and will room at the jail, thus providing an expanded program to care for the physical needs of the prisoners.

"It is with the knowledge of the testimony of the 129 witnesses that we, the Marion County Grand Jury, are able to exonerate the Sheriff's Department of the alleged charges of brutality."

The third front page article in Complaint Exhibit 29 carried a four column headline, "4 Judges Plan For Court Doctor," and reads as follows:

"Judges of the four Municipal Courts of Marion County yesterday made plans to have a court doctor screen prisoners.

"Acting despite exoneration of the Marion County Sheriff's Department by the grand jury of alleged brutality charges, the judges held their first meeting yesterday and plan to meet again twice today.

"They will try to reduce the number of mental patients and alcoholics in jail and provide a new system for investigation of alleged brutality in the county jail and city lockup.

"Judge Ernie S. Burke of Municipal Court, Room 3, the presiding judge, said one of the first steps the judges will take is to hire a doctor or psychiatrist by Dec. 15.

"Burke said that at the beginning the courts want a doctor to spend three half days a week screening prisoners. A sum of $10,000 was budgeted in August for the courts to hire a doctor but so far no one has been hired.

"Burke said that by having a court-appointed doctor, persons requiring immediate medical or psychiatric help could be sent at once to the hospital on an emergency basis.

"'By screening out those who do not need immediate help,' Burke said, 'we would reduce the large number of persons now being sent to the hospital for mental examinations and who are sent from the hospital to the jail because there isn't enough room for them.'

"The other judges are William T. Sharp, John C. Christ and Harry F. Zaklan.

"The judges also are considering long-range plans for an alcoholic treatment center in which persons charged with drunkenness could be placed."

Alcoholics sent to a treatment or rehabilitation center would be under sentence of the court but would be examined at a hearing instead of in court. Burke said the arrangement would be far cheaper for the city and county.

In their meetings today, the judges are expected to lay the groundwork for new policies in the investigation of alleged brutality in the jail and lockup and review the procedure for jailing and caring for all prisoners in both places.

The front page editorial in Complaint Exhibit 29 reads as follows, including headline:

AN EDITORIAL

Grand Jury Report.

Starting on the front page of today's editions of The Star is reported, in its entirety, the special report of the Marion County Grand Jury concerning conditions at the Marion County Jail. 29-1-7-1

This report concludes with an exoneration of "the Sheriff's Department of the alleged charges of brutality." 29-1-7-2

Those charges of brutality were furnished, in large part, to the Grand Jury by reporters of this newspaper following lengthy investigation. The Star made the information available to the Grand Jury in the belief that such information should be considered by an impartial body and a determination made of the validity of the allegations. 29-1-7-3

This publication of the report of the Grand Jury and the public allegations of the many witnesses it heard is part of the responsibility of a newspaper. That responsibility also includes the reporting to the public of charges against elected or appointed officials, it includes the reporting of replies by those officials and it includes the reporting of the judgment of legally constituted juries and judges. 29-1-7-4

This reporting The Star has done to the best of its ability. It will continue to do such reporting to the best of its ability. 29-1-7-5

Exhibit 30 (to Complaint Paragraph 30).

Complaint Exhibit 30 (Tr. 84-85; 264f; SR 74-75; SE 211) is a copy of two front page articles published on November 25, 1965. One of these articles carried a large 8-column headline, "Grand Jury Asks To Resign", a three-column sub headline, "Protests Criticism; Phone Threats Bared", and reads as follows:

All six members of the Marion County grand jury petitioned to be dismissed yesterday because of "attacks upon our integrity and character." 30-1-6-1

The jurors referred to criticism from Judge Eugene M. Fife Jr. of Criminal Court, Division 1. 30-1-6-2

Judge Fife had termed the jury's report on alleged brutality at the Marion County Jail a "whitewash." 30-1-6-3

Several jury members reported receiving threatening telephone calls Tuesday night and yesterday, but they said the calls had nothing to do with their wanting to resign. They dismissed the threats as "crank calls." 30-1-6-4

Sheriff Robert H. Fields, however, assigned 18 deputies to provide around-the-clock protection for the jurors. A deputy was assigned to each juror's home about 4:30 p.m. 30-1-6-5

Fife and Judge Saul I. Rabb, of Criminal Court, Division 2, delayed consideration of the dismissal petition until Monday. 30-1-6-6

The jury is scheduled to serve until Dec. 31. The present jury heard evidence on a securities scandal, a bribery case and a number of murders without yet reporting on them. 30-1-6-7

All those investigations would be worthless if the jury were to be discharged, Prosecutor Noble R. Pearcy said. 30-1-6-8

Meanwhile, reported "leaks" out of the grand jury were being investigated. 30-1-6-9

Rabb and Fife said they would start Monday their own investigation of how an Indianapolis radio station was able to report Monday that it had learned from "usually reliable sources" that there would be no

No deputies were indicted in the report, but there indictments in the report. 30-1-6-10
was an indictment charging a former jail inmate with second degree murder. 30-1-6-11

After four weeks of investigation of alleged brutality at the jail and hearing 129 witnesses, the jury reported it found "no evidence to substantiate the allegations." 30-1-6-12

The jury's petition stated, "We respectfully ask permission to be dismissed from the Marion County grand jury. We feel our ability to function as a grand jury has been questioned after honestly relating our unbiased findings. 30-1-6-13

We have further suffered humiliation and been ignored in our attempts to represent Marion County. We feel the entire principle of the jury has been hampered, in fact rendered useless by attacks upon our integrity and character. 30-1-6-14

Several officials besides Fife, including chief coroner's investigator Bethel E. Gaither, criticized the jury report. 30-1-6-15

The jury foreman, Mrs. Constance A. Dietz, and Charles Chapman, the only male juror, presented the petition to Judge Rabb only and sent a copy to Judge Fife, they said. Rabb later conferred with Fife. 30-16-5-1

The other four jurors are Mrs. Dorothy J. Smith, Mrs. Dorothy McClure, Mrs. Ella Dickerson and Mrs. Anne L. Taflinger. 30-16-5-2

Earlier in the day, Mrs. Dietz had given Rabb a handwritten statement, signed by all jurors, asking his presence in court so that they could "inquire concerning their present status in view of the recent

statements made by the judge of the other division of Criminal Court (Fife), casting direct doubt upon their integrity and honesty as citizens and jurors sworn to uphold the laws. 30-16-5-3

"We respectfully request," the statement continued, "that Judge Eugene Fife not be present or invited to attend said open court inquiry, for the reason he has disqualified himself from further objective help to the citizens on the grand jury . . ." 30-16-5-4

Rabb refused to hold a court inquiry by himself, however. He said that although he is currently the presiding judge of the court, grand jury matters must be heard by both judges, by law. 30-16-5-5

Pearey and his chief trial deputy, Leroy K. New, accompanied Mrs. Dietz into Rabb's office when the first hand written statement was presented. 30-16-5-6

At a news conference later, Pearey said he could not blame the jury for wanting to quit, not only because of Fife's remarks but also because of a stormy session with an earlier witness, Indianapolis industrialist Miklos Sperling. Sperling was reported to have cursed and thrown things at the jury. 30-16-5-7

Pearey said Fife commended the jury for its investigation when it brought in its report Tuesday. Fife's later criticism, Pearey said, was "a betrayal to the citizens of Marion County." Pearey said grand jurors are selected to represent the citizenry in investigation of crime, and he said Fife was "attacking the integrity and character of every citizen of Marion County." 30-16-5-8

Pearey said criticism of the grand jury was inappropriate because "it was their investigation; they heard the witnesses." Questioning of the witnesses was secret, as required by law. 30-16-5-9

Rabb said Judge Fife was within his rights to comment on the contents of the jury's report. 30-16-5-10

"I could not comment because the grand jury returns its indictments into this court until Jan. 2, and I might have to try the cases," he said.

"But Judge Fife should have commented if he wanted to," Rabb said; "it was his right to do so." 30-16-5-11

When asked by radio and television reporters to comment on his criticism of the grand jury report, Fife said, "My comments were reported fairly and accurately in The Indianapolis Star Wednesday morning. My feelings have not changed and I have no other comments to make." 30-16-5-12

Threatening phone calls to jurors included one made by a woman to Chapman's wife. Chapman said the woman told his wife "if I didn't tell the truth today, I was going to be shot." He said he thought it was a "crank call." 30-16-5-13

A woman juror said a caller threatened to burn her house. Pearcy said police have the house under surveillance. 30-16-5-14

The second article in Complaint Exhibit 30 carried a two-column headline, "6 Judges Plan Quick Brutality Check In Future," and reads as follows:

A plan to provide immediate investigation of brutality complaints in the Marion County Jail or city lockup was approved by six judges yesterday. 30-1-7-3

The judges also said they will ask the chief of police or sheriff to submit written reports to their courts in any case where a policeman or deputy uses force on a prisoner. 30-1-7-4

The plan was spearheaded by Judge Eugene M. Fife Jr. of Marion County Criminal Court, Division 1, and Judge Saul I. Rabb of Criminal Court, Division 2. 30-1-7-5

The four Municipal Court judges—Ernie S. Burke, William T. Sharp, John C. Christ and Harry F. Zaklan—supported it. 30-1-7-6

The plan was proposed following the Marion County Grand Jury investigation of alleged brutality in the county jail. The jury exonerated the sheriff's department, but Fife called the panel's report a "whitewash." 30-1-7-7

Rabb said it has been his policy to ask defendants in his court who have been injured about how they were treated in jail. 30-1-7-8

"I believe it is a good move to ask for reports on all incidents where force is used on prisoners of my court," he said. 30-1-7-9

"The sheriff is just the custodian of my prisoners," Rabb added. "As the judge I have the right to make full inquiry about injuries and I will do so." 30-1-7-10

"This system catches problems as they occur," he said. 30-1-7-11

The judges agreed that when brutality is charged, the case will be referred to the prosecutor's office or the Indianapolis Board of Public Safety, or both. 30-1-7-12

Fife said he believed the policy would prove workable and would be a great aid to police and judges in airing brutality claims. 30-1-8-9

Presently, police or sheriff's detectives generally investigate brutality charges. 30-1-8-4

Christ and Sharp said they believed that any time a policeman or deputy is required to use force on a prisoner, the prisoner should be charged with resisting arrest. 30-1-8-5

"It would insure that we would be able to get to the bottom of each case when the defendant appears in court to answer the resisting arrest charge," Christ said. 30-16-6-1

"And the filing of the charge would allow us to determine whether necessary force was used to restore control," Sharp added, "because both the policeman and the defendant will have to appear in court." 30-16-6-2

Judge Christ said he believed more cases of alleged brutality and mistreatment would be disclosed if the judges could agree on issuing an order that all correspondence to judges or public officials from jail inmates be completely uncensored. 30-16-6-3

Governor Roger D. Branigin last week announced that mail to him from inmates of the state penal institutions was to be uncensored; although Branigin's action did not stem from the investigation of the Marion County Jail. 30-16-7-1

Christ said he would offer his suggestion to the other Municipal Court judges next week. 30-16-7-1

Judge Burke, presiding Municipal Court judge, said he also believes the plan will be an aid to police. 30-16-7-2

"If they know we are going to inquire about injuries, they will have reports on how the injuries occurred," he said. 30-16-7-3

Burke said that by referring brutality claims to the prosecutor or safety board "the burden of the police department investigating itself is eliminated." 30-16-7-4

The four municipal judges said they plan to meet again next week to discuss hiring a doctor to examine sick, injured, alcoholic or mentally ill 30-16-7-5 prisoners before they appear in court, review the procedure for jailing and caring for prisoners in the county jail and city lockup, and press plans to keep mental patients and alcoholics out of jail. 30-16-8-1

Exhibit 31 (to Complaint, Paragraph 31).

Complaint Exhibit 31 (Tr. 86-87; 5279; SR 76-77; SE 881) is a copy of two front-page articles published on November 26, 1965. One of the articles carried a small 8-column headline, "Fife Charges Pearey 'Steered' Jury," a one-column sub-headline, "'Criticizes Method In Jail Probe," and reads as follows:

Judge Eugene M. Fife Jr. of Marion Criminal Court, Division 1, yesterday placed the blame on Prosecutor Noble R. Pearey's office for what Fife termed a "whitewash" of charges of brutality at the Marion County Jail. 31-1-1-1

Fife charged that the prosecutor's office steered the

grand jury to the conclusion that there was no evidence of brutality at the jail. 31-1-1-2

"I have no criticism in any way of the grand jury," Judge Fife said. "The jurors were only the victims of the whitewash manipulation staged by the prosecutor's office." 31-1-1-3

Judge Fife, along with Judge Saul I. Rabb, Criminal Court, Division 2, is considering a request made by the six jurors Wednesday that they be permitted to resign because of "attacks on our integrity and character." 31-1-1-4

Official concern was voiced over the fact that resignation of the grand jury would undo all of the work done in its investigation of key cases, particularly securities operations. 31-1-1-5

Pearcy said he did not know exactly how many cases are pending before the grand jurors, but noted that the investigation of securities dealings still is under way and said, "The resignation of the grand jury would pose a very serious problem to us." 31-1-1-6

The prosecutor's office is in the process of obtaining the records of the Investment Corporation of America, the firm formerly headed by Robert S. Chappell, Pearcy said. "I was very surprised at the grand jury's request," he said. 31-1-1-7

The grand jury has heard from about 30 witnesses, including Secretary of State John D. Bottorff, in the securities probe. 31-1-1-8

Judge Fife, Bethel E. Gaither, chief coroner's investigator, and several other persons criticized the jury report delivered Tuesday which exonerated the Marion County Sheriff's Department of any guilt in alleged brutality at the county jail. 31-1-1-9

Fife said:

"I have been fighting the idea for several terms that the grand jury belongs to the prosecutor's office. It only heard what the prosecutor wanted heard and saw what the prosecutor wanted seen and deliberated what the prosecutor wanted deliberated. 31-14-6-1

"It is just an adjunct of the prosecutor's office," Judge Fife said, adding, "and then the prosecutor's office has the gall to say it had nothing to do with the writing of the report." 31-14-6-2

Prosecutor Pearcy countered Judge Fife's statement by saying: "To call this grand jury report a 'whitewash' is a complete falsehood. And the grand jury is not mine, it is Judge Fife's and Judge Rabb's. 31-14-6-3

"They chose the jurors; they questioned them before they were impaneled. And then to make the statements Judge Fife did about the report, after he congratulated the jurors from the bench for their work, is an injustice to the jurors," Pearcy said. 31-14-6-4

"The grand jurors can interrogate any witness they wish; that was a grand jury investigation and report, not mine," he said. "If Judge Fife cares to say different, that's his business. But I criticize his position very, very strongly." 31-14-6-5

The only indictment returned by the grand jurors charged William A. Brown with second-degree murder in the death of Elmer L. Reagan, 50 years old, 404 Massachusetts Avenue. 31-14-6-6

Sheriff's deputies said Brown, who was reported chained to his jail cell bars July 14, beat Reagan that day. Reagan died Aug. 7 in Marion County General Hospital from pneumonia brought on by the beating. 31-14-6-7

The indictment was returned after the jurors received a signed, notarized statement from Charles P. McAdams, that he saw a deputy beat Reagan twice that day. 31-14-6-8

McAdams repudiated his statement after he was questioned twice by the Sheriff's department, once before and once after his grand jury appearance. McAdams now is a "trusty"—a privileged prisoner—at the jail. 31-14-7-1

Judge Rabb said he will confer with Judge Fife Monday and reach a decision on the request. 31-14-7-2

"There are a lot of things to be considered," Rabb said, "the number of persons in jail awaiting trial, the number of cases the jury already has heard, the possibility of charging some of these people by affidavit and bringing them to trial." 31-14-7-3

Judge Rabb has been known for his desire to guarantee suspects a speedy trial. A sign in his court quotes the statement, "Justice delayed is justice denied." 31-14-7-4

Judge Rabb said he will talk with Prosecutor Pearcy about those matters before Monday's conference. 31-14-8-1

"If this had happened in October, the decision would have been easier," Judge Rabb said. "There would have been time for a new jury to hear the cases before the end of its term. Now we have only a month." 31-14-8-2

When submitting their request to resign, several jurors reported having received threatening telephone calls. Sheriff Robert A. Fields put the homes of all the jurors under an around-the-clock surveillance by his deputies and said yesterday that there had been no incidents. 31-14-8-3

The sheriff said he felt the alleged threats were "due to stories in The Indianapolis Star" and added that the deputies would continue the watch "as long as The Star continues harassment of the jurors." 31-14-8-4

The second article in Complaint Exhibit 31 carried a four-column headline, "Probe On Squillan's Rights Sought," and reads as follows:

A Federal investigation will be sought to determine if a Marion County deputy sheriff violated the rights of Robert F. Squillan, Squillan's attorney said yesterday. 31-1-1-11

The lawyer, William C. Erbecker of Indianapolis, said he will submit the request in writing today or Monday to United States Attorney Richard P. Stein here and also to Federal officials in Washington, D. C. 31-1-1-12

The request for a probe will be based on attempts to obtain evidence in the bribery charge hearings of former Sheriff's Sgt. Charles W. Haine, Erbecker said. 31-1-1-13

Squillan of Brooklyn, N. Y., charged in a notarized statement that Sheriff's Sgt. Felson Bowman repeatedly threatened him with imprisonment for bribery and for parole violation in order to get him to give evidence against Haine. 31-1-2-1

Erbecker, who said he has the written permission of Squillan to release the statement, said he hopes to use the results of the civil rights probe to show that the pressure placed on Squillan caused temporary derangement of Squillan's mind. 31-1-2-2

Marion County Prosecutor Noble R. Pearcy said yesterday that he may leave during the weekend for New York or Washington. Although he would admit only that the trip would be on "prosecutor's business," it was believed the "business" concerned the Squillan case, which is pending before the grand jury. 31-1-2-3

After the questionings by Bowman in New York, Squillan fled the country, went to Frankfurt, Bonn and West Berlin, Germany. He then wrote a letter in which he threatened the life of President Lyndon B. Johnson and sent it to the FBI. 31-1-3-1

He went to the American Consulate in Rome, Italy, and was arrested by the FBI for writing the letter. He will be transferred from the Federal Detention Headquarters in New York to Washington to stand trial for the threat. 31-1-3-2

Calling jail conditions here "miserable," Squillan added in the notarized statement, "I knew the Federal government would arrest me for this letter and this is

what I wanted for I did not want to go back to Indiana." 31-1-3-3

Erbecker said that if Federal authorities determine that Squillan's rights under the 1965 Civil Rights Law were violated, action against the deputy would come through Federal grand juries in Indianapolis, New York or Washington. 31-1-3-4

Bowman was the only person named by Squillan. 31-1-4-1

Sgt. Haine was accused by the Sheriff's Department of taking $600 from Squillan and $200 from Squillan's mother, Mrs. Florence Dagrossa, to obtain a suspended 1-to-10-year sentence handed down by Judge Eugene M. Fife Jr. in Marion Criminal Court, Division 1, last March.[3] Squillan had been found guilty of committing robbery here. 31-1-4-2

Squillan said he signed a statement against Haine prepared by Sgt. Bowman because he was "afraid of losing everything I had worked hard for after my return" to New York. 31-1-4-3

Haine was discharged by the Sheriff's Merit Board Oct. 26 after he was found guilty by the board of taking the money from Mrs. Dagrossa and of numerous other departmental infractions. 31-1-4-4

Exhibit 32 (to Complaint Paragraph 32).

Complaint Exhibit 32 (Tr. 88; 5280; SR 78; SE 886) is a copy of a front-page article published on November 27, 1965, which carried a five-column headline, "Jury Wrote Jail Report, Foreman Says," and reads as follows:

The foreman of the Marion County Grand Jury, Mrs. Constance A. Dietz, declared at a press conference yesterday that the jury's recent report on the Marion County jail was written by the jury without help from the prosecutor. 32-1-1-1

Judge Eugene M. Fife Jr. of Criminal Court, Division 1, had charged that Prosecutor Noble R. Pearcy

and his staff influenced the jury to return the report which exonerated sheriff's deputies of charges of brutality. 32-1-2-1

Mrs. Dietz read the following statement to newsmen at her home, 3624 East 42d Street: 32-1-2-2.

"We of the Marion County Grand Jury wish to make the following statement: 32-1-2-3

"In reference to statements published concerning the question of authorship of the grand jury report, we have this to state: Each member of the jury first organized his own rough report. These thoughts and extensive notes were then incorporated into one finished report. We still have, in our possession, these rough notes. It should be noted that this report was agreed upon and signed by all jurors. We were complimented in open court on our diligent efforts. We understand that this is the first report written by a grand jury and not the prosecutor's deputy, with the exception of one special report written previously by this same jury. 32-1-2-4

"We have retained in our possession throughout the entire investigation, all names furnished to us by both criminal courts, representatives of The Indianapolis Star, and the Sheriff's Department. Also in our possession are letters from former inmates or members of their families. The majority of these notes, memorandum, and letters were furnished by the criminal courts and representatives of The Indianapolis Star. We interrogated everyone that we felt could shed any light on this investigation, including doctors, ministers and priests. 32-1-3-1

"The grand jury, and only the grand jury, had the evidence to evaluate. We feel the criticism was unfair and unjust, and was near libelous to us as citizens." 32-1-4-1

Fife had said the grand jury has been "just an adjunct of the prosecutor's office." 32-1-4-2

Fife earlier had termed the report a "whitewash" of the charges against the deputies of Sheriff Robert

H. Fields, who is a close personal and political friend of Prosecutor Pearcy. 32-1-5-1

Two other members of the jury, Mrs. Dorothy McClure and Mrs. Dorthy J. Smith, were present at the press conference; the other three jurors—Charles Chapman, Mrs. Anne L. Taffinger and Mrs. Ella Dickerson—were not. The three present said that Chapman was "wholeheartedly behind" yesterday's statement, that Mrs. Taffinger is out of town on a holiday trip, and that they were unable to contact Mrs. Dickerson because her telephone line was busy. 32-15-5-1

Charges against deputies included a statement by an inmate that he saw a deputy beat another jail inmate who was hospitalized shortly afterward and later died. The inmate who gave the statement, however, repudiated it later. The grand jury indicted another inmate, William A. Brown, on a charge of second degree murder in the death. 32-15-5-2

Other charges included one that another inmate died of pneumonia after lying sick and untended by deputies in the jail for two days, and statements by a number of inmates and former inmates that they either suffered beatings or saw other prisoners beaten by deputies in the jail. 32-15-5-3

The jury's report Tuesday included a statement that it had found "no evidence to substantiate the allegations." 32-15-5-4

Asked yesterday whether this meant that all the accusers had changed their stories inside the grand jury room, Mrs. Dietz said she could not answer the question because grand jury testimony is secret, by law. 32-15-5-5

"The public will have to decide for themselves," she said, "or take our word for it." 32-15-5-6

The jury report did acknowledge evidence "of an instance when tear gas was used on an individual prisoner." 32-15-5-7

The report also criticized the age-old practice of keeping mental patients in the jail. 32-15-6-1

The jury questioned 129 witnesses in its four-week investigation. 32-15-6-2

Mrs. Dietz said that letters and calls to her and other jurors in the last two days have run "almost 10 to 1" in praise of them for the report. 32-15-6-3

Exhibit 33 (to Complaint Paragraph 33).

Complaint Exhibit 33 (Tr. 89; 5281; SR 79; SE 888) copy of an article and an editorial published on Sunday, November 28, 1965, in the second or editorial section.

The article carried a four-column headline, "Fife, Rabb Decide Tomorrow On Jury's Request To Resign," and reads as follows:

Marion Criminal Court Judges Eugene M. Fife Jr., Division 1, and Saul I. Rabb, Division 2, are scheduled to decide late tomorrow whether to grant the request of the Marion County Grand jury that it be permitted to resign. 33-1-5-1

Meanwhile, more that 30 prisoners in Marion County Jail in various cases face possible formal charging by prosecutor's affidavit instead of indictment if the grand jury is allowed to quit. 33-1-5-2

Among major cases under consideration by the grand jury are two which would have to be reheard because they involve homicides.

The two are: 33-1-6-2

1. The Sylvia Likens murder case—Mrs. Gertrude Wright, 37 years old, Richard Dean Hobbs, 14, and four other juveniles are held in the torture death of the 16-year-old Miss Likens in Mrs. Wright's Eastside home Oct. 26. 33-1-6-3

2. Patrolman Thomas R. Graham murder case—Nathaniel H. Harris, 29, is held in the shooting death of Patrolman Graham in the basement of the City-County Building Oct. 12. 33-1-7-2

The grand jury also has before it two investigations which, if dropped, would have to be completely reheard.

It is considered highly unlikely that these cases, in which no arrests have been made, would be handled by prosecutor's affidavit. The cases: 33-1-7-3

1. The Securities Probe—More than 30 witnesses including Secretary of State John Bottorff, have been heard in regard to allegations of misconduct by public officials in dealings with investment brokers. 33-1-7-4

2. The Charles W. Haine Case—Former Sheriff's Sgt. Haine was found guilty of taking bribes by the Sheriff's Merit Board Oct. 26. 33-1-7-5

A report that the jury may withdraw its request to resign—a request made after the jurors were criticized for their report exonerating the Sheriff's Department of any guilt in charges of brutality at the jail—was flatly denied yesterday by jury foreman, Mrs. Constance Dietz. 33-1-7-6

"My concern in considering the jurors' request is those prisoners," Judge Rabb said yesterday. He said he will confer with Prosecutor Noble R. Pearcy or his representative tomorrow on possibility of bringing some of the prisoners to trial by prosecutor's affidavit if the jury resigns. 33-1-7-7

Pearcy said last night, "We will do all we can to expedite the trials of some of the prisoners, charging them by affidavit when we can" if the jury is lost. 33-1-7-8

Meanwhile, a request for a Federal civil rights investigation of the actions of a Marion County Sheriff's deputy in his attempt to obtain evidence from a former jail prisoner is to be mailed this afternoon by the former prisoner's attorney, William C. Erbecker. 33-1-8-1

Erbecker said the probe is being requested on the behalf of Robert F. Squillan of Brooklyn, N. Y., who charged in a notarized statement that Sheriff's Sgt. Felson Bowman threatened him with imprisonment for bribery and for parole violation unless he gave evidence in the case of Sgt. Haine. 33-1-8-2

Haine was charged by the sheriff of taking bribes

and of numerous other department rule violations. He was found guilty by the Merit Board of taking $600 from Squillan and $200 from Squillan's mother, Mrs. Florence Dagrossa, along with other violations. 33-1-8-3

After the alleged questioning by Bowman, Squillan fled to Europe where he wrote a letter threatening President Lyndon B. Johnson and sent it to the FBI. He subsequently was arrested and now faces trial for the threat. 33-1-8-4

In his statement, Squillan said he knew he would be arrested for the threat and that he wanted the arrest because, "I didn't want to go back to Indiana." 33-1-8-5

Erbecker said that if the investigation shows Squillan's rights were violated, he will use the information in Squillan's trial for making the threat to help show that Squillan was not in his right mind when he wrote the letter. 33-1-8-6

Any action against Bowman would have to be taken by a Federal grand jury, Erbecker said. 33-1-8-7

The Marion County Grand Jury's report on the jail was termed a "whitewash" by Judge Fife, other public officials and some local leaders. Judge Fife said he did not blame the jurors, calling them "the victims of a whitewash manipulation staged by the prosecutor's office." 33-1-8-8

The jurors issued a statement Friday saying they wrote the report without any direction by prosecutor's office. 33-1-8-9

The editorial in Complaint Exhibit 33 reads as follows, including headline:

AN EXCELLENT PLAN

The plan approved by six judges, calling for immediate investigation of brutality complaints in the Marion County Jail or city lockup, deserves the fullest support of city and county officials.

Under the plan agreed upon by the judges as soon as a brutality charge is made, the case will be referred at once to the prosecutor's office, the Indianapolis Board of Public Safety, or both.

At present, such investigations usually are made by police or sheriff's detectives. This, unfortunately, places the probe in the hands of individuals who might feel it in their interest to minimize or cover up the charges in behalf of themselves or cronies in their department.

The plan removes the risk that this could happen.

It has stated support of the County's two Criminal Court and four Municipal Court judges.

The judges also said they will ask the police chief or sheriff to make a written report to their courts whenever a policeman or deputy has to use force on a prisoner.

This plan is an excellent one. It also promises to eliminate the chance that brutality or other irregularities in the handling of prisoners might "accidentally get lost in the shuffle."

We commend the judges for evolving this solution to a serious problem. We hope that it is put into effect at once.

Exhibit 34 (to Complaint Paragraph 34).

Complaint Exhibit 34 (Tr. 90; 5282; SR 80; SE 892) is a copy of a front-page article published on November 19, 1965, which carried a one-column headline, "Jury Dismissal Decision Due This Morning," and reads as follows:

A decision on the Marion County Grand Jury's request that it be dismissed will be made at a closed session between Criminal Court Judges Eugene M. Fife Jr., Division 1, and Saul I. Rabb, Division 2, at 11 a.m. today, Judge Fife said last night. 34-1:5-1

The judge also said he will hold a press conference after the decision is announced "to answer publicly

the allegations made against me by the prosecutor's office after I termed the Grand Jury's report on brutality charges at the jail an obvious whitewash." 34-1-5-2

Judge Fife said the press conference will be held about noon. 34-1-5-3

The grand jurors asked to be dismissed Wednesday, calling criticism of their actions "attack on our integrity and character." The jury completely exonerated the sheriff's department of any guilt in the brutality charges. 34-1-5-4

Judge Fife said he did not blame the jurors, calling them "the victims of a whitewash manipulation staged by the prosecutor's office." 34-1-5-5

Pearcy replied Thursday, saying: "To call this grand jury report a 'whitewash' is a complete falsehood. If Judge Fife wants to think different, that's his business. But I criticize his stand very, very strongly." 34-1-5-6

Pearcy will not be in Indianapolis today. He and his grand jury deputy James E. Bath went to New York City yesterday on secret business. 34-1-5-7

Although Pearcy would say only that the trip was on "prosecutor's business," it was believed the trip concerned the case of Robert F. Squillan. 34-1-5-8

Squillan gave a statement that he gave money to former Sheriff's Sgt. Charles W. Haine. Haine was dismissed by the Sheriff's Merit Board Oct. 26 after being found guilty of taking bribes from Squillan, and his mother and of other departmental rule infractions. The case now is before the grand jury. 34-14-4-1

Squillan said in a notarized statement to his attorney, William C. Erbecker, that he was badgered by Sheriff's Sgt. Felson Bowman and that Bowman threatened to have him returned to jail for bribery and parole violations if he did not give evidence against Haine. 34-14-5-1

Erbecker, who said he has the written permission of Squillan to release any information on the case, yesterday sent a request for a Federal investigation to determine if Squillan's civil rights were violated by Bowman. 34-14-5-2

Exhibit 35 (to Complaint Paragraph 35).

Complaint Exhibit 35 (Tr. 91; 5283; SR 81; SE 894) is a copy of a front-page article published on November 30, 1965, which carried a large 8-column headline, "Jury Told To Stay On Job," a one-column sub-headline, "Pearcy Assailed By Fife," and reads as follows:

The two Marion Criminal Court judges yesterday refused to allow the grand jury to resign and ordered jurors back to work. 35-1-8-1

Immediately after the judges' action, Judge Eugene M. Fife, Jr. of the court's Division 1, verbally attacked Prosecutor Noble R. Pearcy, for "twisting my statements" regarding the jury's report which exonerated the Marion County Sheriff's Office of alleged brutality charges. 35-1-8-2

Meanwhile, it was reported last night that Sheriff's Sgt. Donovan King, a key figure in the jail investigation, had submitted his resignation to Sheriff Robert H. Fields. 35-1-8-3

King was suspended by Fields after the jail probe started last month for allegedly firing a tear gas shell into a jail cell. 35-1-8-4

Fields and King could not be reached for comment last night. However, Maj. Alva R. Funk, the sheriff's executive officer, said he did not believe Fields had acted on the resignation. 35-1-8-5

King had testified before the jury, but Fields did not give additional details on the tear gas incident when he suspended King. 35-1-8-6

After the judges ordered the jury to return to work to consider such cases as a securities probe, several

murder cases and the case of fired sheriff's Sgt. Charles W. Haine, Fife launched an all-out attack on Pearcy. 35-1-8-7

Fife asserted:

"I don't blame the grand jury for the whitewash. I lay the blame on the prosecutor's office. It is no secret that Prosecutor Pearcy and Sheriff Robert H. Fields are close personal friends and political allies. And I believe that the record will show Mr. Pearcy was influential in having Fields appointed sheriff." 35-1-8-8.

Fife said he thought the members of the grand jury carefully considered what was brought before them, adding: "But they are only laymen. They are neither skilled investigators nor interrogators. They rely largely on the prosecutor's office, which manipulated them and what they saw and heard and they didn't even realize it." 35-1-8-9

Judge Fife then enumerated several items which he said led him to believe that the grand jury had been steered by the prosecutor's office.

His points: 35-1-8-10

1. "I have personal knowledge of one prisoner, arrested for drunken driving, who was put in jail and beaten so badly he couldn't go back to work for 30 days. That's not necessary discipline. 35-1-8-11

2. "I also have knowledge that Prosecutor Pearcy personally thanked one of his jail-bird witnesses for testimony he gave before the grand jury. He met this witness in the hall and thanked him. 35-1-8-12

3. "The indictment of William A. Brown, for the murder of Elmer L. Reagan was ridiculous, especially in view of the fact that the jury had been considering Brown's case since August and knew he was mentally ill. 35-18-1-1

4. "Why did the sheriff's deputies take Charles P. McAdams into custody and question him both before and after his grand jury testimony? 35-18-1-2

5. "McAdams apparently gave two different stories, the one he gave myself and the coroner's office and the story he later told the grand jury. Now if McAdams lied in the first statement, how could the jurors believe anything he said following that? But the grand jury said in their report that they disapproved of the use of tear gas to quell one unruly prisoner, which was in fact," Fife explained, "one half of McAdams' original statement." 35-18-1-3

In regard to Brown, who was charged with the beating death of jail inmate Elmer Reagan, Fife said he wondered why so much furor was created when McAdams made a statement charging that a deputy sheriff, not Brown, had administered the beating. 35-18-1-4

"The prosecutor's office had this case since August and took no action. Then all of a sudden a big investigation begins and 129 witnesses are called, and the mental patient, incapable of defending himself, is charged. 35-18-1-5

"Then," Fife continued, "Pearcy begins to attack me. Pearcy isn't sincere. He knew he wasn't going to lose his grand jury and he hasn't lost it. He can continue now with his state securities probe, the results of which I'm anxious to see." 35-18-1-6

McAdams, who made a statement to Bethel E. Gaither, chief investigator for the Marion County Coroner's Office, said he saw Reagan beaten by a sheriff's deputy on July 14, and not by a mental patient as deputies said. 35-18-1-7

McAdams repudiated his statement after he was questioned by deputies before and after his grand jury appearance. 35-18-1-8

Fife said he was by no means alone in his belief that the grand jury report was a whitewash. "My phone has rung off the wall with people expressing the same point of view," he said. 35-18-1-9

Fife said he also couldn't believe that his disagreement with the findings of six grand jurors, "could

strike terror into the hearts of three-fourths of a million people as the prosecutor said it did." 35-18-1-10

"I believe that the jury's report was a whitewash engineered by the prosecutor to benefit his friend," Fife said, "and I haven't changed my mind." 35-18-1-11

Members of the grand jury asked to resign last week after Fife termed their report of conditions at the County Jail, "an obvious whitewash." 35-18-1-12

The grand jury delivered its report to the judges last week, after a four-week investigation of jail conditions and hearing testimony of 129 witnesses. 35-18-1-13

Both presiding Judges Saul I. Rabb of Division 2, and Fife said their decision to deny the jury's request to resign was based on the fact that 54 persons are in jail, awaiting grand jury action, and the cases of 36 other persons, charged with crimes but free on bond, also are awaiting grand jury deliberation. 35-18-1-14

"If you are allowed to resign," Rabb told the jury, "another jury would have to be impaneled and they would have to cover much of the same ground you have covered previously. You have served on the jury five months and I think you can continue for another month. And I wish you would." 35-18-1-15

Fife told the members of the grand jury:

"Much has been said about this situation. Prosecutor Pearcy said publicly that I was inconsistent in my remarks. He said I first complimented the grand jury for their report and later castigated them. 35-18-2-2

"That's a pretty good story," Fife said, "except it's just not true. When the jury presented their report to Judge Rabb and myself, I only glanced at it and looked at the last page which showed one indictment. 35-18-2-3

"I thanked the jury for the time and energy they had spent. I didn't read the report until later," Fife

said. "And when I read it, I read it three times before I gave my comments. And Prosecutor Pearcy for reasons of his own, twisted what I said." 35-18-2-4

Exhibit 36 (to Complaint Paragraph 36).

Complaint Exhibit 36 (Tr. 92; 5284; SR 82; SE 898) is a copy of a front-page article published on December 1, 1965, which carried a four-column headline, "Aide's Resignation Not Linked To Jury's Jail Probe, Sheriff Says," and reads as follows:

> Marion County Sheriff's Sgt. Donovan L. King did not resign from the department because of the grand jury prove of alleged county jail brutality, Sheriff Robert H. Fields said yesterday. 36-1-2-1
>
> Fields, who accepted the resignation yesterday, effective today, said King resigned for "personal reasons." He did not elaborate. 36-1-2-2
>
> King, who had been assigned to the jail until he was suspended by Fields for allegedly firing a tear gas shell into a cell, could not be reached for comment last night. 36-1-3-1
>
> The only criticism of the sheriff's department by the grand jury concerned the use of tear gas on a prisoner. "We feel that such a drastic measure should be used only in the event of a riot or major disturbances," the report stated. 36-1-3-2
>
> Meanwhile, four municipal court judges are scheduled to meet again today to discuss hiring a doctor to examine sick, injured, alcoholic or mentally ill jail prisoners before they appear in court. 36-1-4-1
>
> The judges also plan to review the procedure for jailing and caring for prisoners in the county jail and the city lockup. Possible measures for keeping mental patients and alcoholics out of the jail also will be discussed. 36-1-4-2
>
> In another development, attorney William C. Erbecker said yesterday he received an "urgent" plea

from Robert F. Squillan requesting Erbecker to come to Washington where Squillan is being held under Federal indictment for threatening the life of President Johnson. 36-1-4-3

Squillan, who has charged that a Marion County sheriff's deputy violated his civil rights while the deputy was gathering evidence against former Sheriff's Sgt. Charles W. Haine, did not explain in his letter why it was urgent for Erbecker to come to Washington. 36-1-5-2

Erbecker, who is awaiting word from Federal officials concerning the possible violation of Squillan's civil rights, has the written permission of the 23-year-old former soldier to release information concerning his case. 36-22-1-2

Erbecker said he hopes to use the results of the civil rights probe to show the pressure placed on Squillan caused temporary derangements of Squillan's mind. 36-22-1-3

Marion County Prosecutor Noble R. Pearcy was scheduled to return late last night from New York where he was attending to "prosecutor's business." Squillan had been held in New York for a time. 36-22-1-4

Haine has appealed a bribery conviction by the Sheriff's Merit Board. 36-22-1-5

Squillan has stated he signed a statement against Haine prepared by Sheriff's Sgt. Felson Bowman because he was "afraid of losing everything I had worked hard for after my return" to New York. 36-22-1-6

Haine was discharged Oct. 26 for bribery and other departmental infractions. 36-22-1-7

Exhibit 37 (to Complaint Paragraph 37).

Complaint Exhibit 37 (Tr. 93; 5285; SR 83; SE 900) is a copy of a front-page article published on December 3, 1965, which carried a four-column headline, "Mental Patient Pleads Not Guilty In Jail Inmate Reagan's Death," and reads as follows:

> A 27-year-old mental patient pleaded not guilty in Marion County Criminal Court, Division 2, yesterday to the murder of inmate Elmer L. Reagan in the Marion County Jail. 37-1-3-1
>
> William A. Brown appeared calm and attentive during the 15-minute arraignment before Judge Saul I. Rabb and once looked over his shoulder to nod to his father, Henry W. Brown, who was seated in the courtroom. After the hearing, Brown was returned to Marion County General Hospital. 37-1-3-2
>
> Judge Rabb appointed two pauper attorneys, William F. Wurster and Frank P. Huse Jr., to defend Brown, who entered his plea after hearing the indictment read in open court. 37-1-3-3
>
> Brown has been under psychiatric observation at Marion County General Hospital since Aug. 2. He has been in continuous custody since he was arrested in the Indianapolis Police Headquarters training academy, for the theft of a training pistol June 28. 37-1-4-1
>
> Brown was formerly a mental patient at the Pennsylvania State Mental Hospital in Philadelphia. 37-1-4-2
>
> Judge Rabb ordered both of Brown's attorneys to, "make a complete and thorough check of this man's background. He has been in General Hospital for a long time. Find out why, and file the proper motions with this court." 37-1-4-3
>
> Brown was indicted Nov. 23 by the Marion County Grand Jury on a charge of second-degree murder after a four-week investigation of alleged brutality and

mistreatment by deputies of prisoners in the jail. 37-1-5-1

The jury's report, which exonerated the sheriff's department of the brutality charges, was termed an "obvious whitewash" by Judge Eugene M. Fife, Jr., of Marion Criminal Court, Division 1. He charged that the prosecutor's office had steered the members of the grand jury in their investigation. 37-1-5-2

Reagan died Aug. 7, of injuries he suffered in a beating at the jail on July 14. When Reagan's death was bared by The Star Aug. 12, no reports of either his beating, his hospitalization or his death existed at the sheriff's office and no investigation was in progress. 37-1-6-1

Sheriff's aides, however, arrived at the version that Reagan was beaten by Brown, whom they described as a violent mental patient, after both were placed in the same cell. 37-11-7-1

Brown was arrested and charged with Reagan's death after sheriff's aides said they found four eyewitnesses to the beating who gave them evidence. 37-11-7-2

In subsequent developments, prisoner Charles P. McAdams gave Judge Fife and chief coroner's investigator Bethel E. Gaither a statement in which he charged that a deputy sheriff, not the mental patient, was responsible for Reagan's beating. 37-11-8-2

McAdams' statement was turned over to the grand jury by Gaither who began an investigation. McAdams repudiated his statement after he was questioned by sheriff's deputies before and after his grand jury testimony. 37-11-8-3

But the jury continued its probe, hearing a total of 129 persons, and exonerated the sheriff's department and indicted Brown for Reagan's death. 37-11-8-4

Exhibit 38 (to Complaint Paragraph 38).

Complaint Exhibit 38 (Tr. 94; 5286; SR 84; SE 902) is a copy of a front-page article published on December 11, 1965, which carried a three-column headline, "Lawyers Seek Writ, Say Brown Is Illegally Held," and reads as follows:

> Attorneys for William A. Brown, who is charged with the death of jail inmate Elmer L. Reagan, yesterday filed petitions for a writ of habeas corpus hearing in Marion Criminal Court, Division 2. 38-1-6-1
>
> Brown, 26 years old, 404 North Illinois Street, was indicted by the Marion County Grand Jury last month, and charged with second-degree murder in the death of Reagan, 50, who died Aug. 7, of pneumonia resulting from injuries he suffered in a beating in the jail. 38-1-7-2
>
> Brown's court-appointed attorneys, Frank P. Huse Jr., and William F. Wurster, charged in their petition that Brown is being held illegally without bail for a crime he did not commit in violation of his Constitutional rights. 38-1-8-1
>
> Meanwhile, Criminal Court Judge Saul I. Rabb signed an order, requested by Brown's attorneys, ordering the prosecutor to furnish the names and addresses of all additional witnesses they intend to call for testimony in the writ hearing, by Dec. 14. 38-1-8-2
>
> Judge Rabb set Dec. 23 for the hearing date. 38-23-1-1
>
> Brown was arrested on a charge of second-degree murder last August, after The Star bared Reagan's death. However, when Reagan's death was uncovered, no official sheriff's reports existed regarding either his beating or his hospitalization and death, no suspects had been questioned and no investigation was underway. 38-23-1-2
>
> Brown had been a prisoner at the jail since June

when he was arrested by city police for the alleged theft of a training pistol from the city police academy. Reagan was arrested June 28 by city police on a charge of drunkenness. 38-23-2-1

Later, a jail inmate, who signed a notarized statement, said that a deputy sheriff, not Brown, had beaten Reagan. 38-23-2-2

But the inmate repudiated his statement after he was questioned before and after his grand jury testimony by sheriff's deputies. 38-23-2-2

The inmate's statement touched off a grand jury probe of alleged brutality and mistreatment of prisoners in the jail which resulted in a special jury report exonerating the sheriff's office and in Brown's indictment. 38-23-2-3

Brown has been confined at Marion County General Hospital since Aug. 2 for psychiatric observation. 38-23-2-4

Judge Eugene M. Fife Jr., of Criminal Court, Division 1, termed the grand jury report an obvious "whitewash" which had been steered by Prosecutor Noble R. Pearcy to protect his friend and political ally, Sheriff Robert H. Fields. 38-23-2-5

Exhibit 39 (to Complaint Paragraph 39).

Complaint Exhibit 39 (Tr. 95; 5287; SR 85; SE 904) copy of a front-page article published on December 15, 1965, which carried a four-column headline, "Judges Reveal 6-Point Program—Court Doctors To Check Prisoners," and reads as follows:

Four Municipal Court judges yesterday revealed the appointment of a court doctor who will aid them in providing immediate medical care for prisoners and evaluate emergency psychiatric conditions of all prisoners in the court's jurisdiction. 39-1-2-1

Presiding Judge William T. Sharp of Municipal Court, Room 4, announced that Dr. Robert E. Lewis, 32 years old, had been named to the position. 39-1-2-2

The Municipal courts moved last month to keep mental patients out of jail after Judge John C. Christ of Municipal Court, Room 5, introduced a reform program quickly approved by the other judges. 39-1-3-1

Christ's move came in the wake of a grand jury probe of alleged brutality and mistreatment of prisoners in the Marion County Jail. The investigation resulted in a special grand jury report that exonerated the sheriff's office. 39-1-3-2

The report was termed an obvious whitewash by Judge Eugene M. Fife Jr. of Marion Criminal Court, Division 1. Fife said the grand jury had been steered to its conclusion by Prosecutor Noble R. Pearcy, friend and political ally of Sheriff Robert H. Fields. 39-1-3-3

In announcing the appointment of Dr. Lewis, Judge Sharp outlined this program of needs the doctor will fill:

1. Provide immediate medical screening for persons whose arrests were made under circumstances which indicate there is a possible need for emergency psychiatric evaluation. 39-1-4-1

2. Provide the courts with prompt medical evaluations of prisoners to allow emergency care for bona fide psychiatric and medical problems. 39-1-4-2

3. Speed up the release of those persons whose arrests were occasioned by some need for emergency action, but who are able to provide for their own care and treatment on a private basis. 39-1-4-3

4. Provide reports to the judges regarding injuries and prisoner ailments which are not evident on observation by non-medical personnel, and which would render the prisoners incapable of understanding the proceedings in which they are involved. 39-1-5-2

5. Aid in a more selective referral to the hospital in order that the facilities there be used only in an absolute necessity, thereby relieving them of acutely crowded conditions. 39-14-3-1

6. Expedite the release from jail of those persons

who have been examined and found to be in need of institutional care. 39-14-3-2

"It is hoped," Sharp said, "that under this program, persons who are not responsible for their acts by reason of illness or injury may, promptly as possible, be segregated from criminal elements and treated accordingly." 39-14-3-3

Dr. Lewis is married and the father of two children. He and his wife, Susan live at R. R. 9, Box 297 W. He is a deacon at the Broadway Baptist Church. He was graduated from DePaul University in 1953, the Indiana University Medical School in 1957, and served his internship at Methodist Hospital. He has practiced medicine for seven years. 39-14-3-4

Dr. Lewis is a member of the American and Marion County Medical associations and the Phi Rho Sigma Medical Fraternity. 39-14-3-5

Other judges concurring in Dr. Lewis' appointment were Judge Christ, Judge Ernie S. Burke of Municipal Court, Room 3, and Judge Harry F. Zakkan of Municipal Court, Room 6. 39-14-3-6

Exhibit 40 (to Complaint Paragraph 40).

Complaint Exhibit 40 (Tr. 96; 5288; SR 86; SE 911) is a copy of an article published on December 18, 1965, on page 27, which carried a two-column headline, "Jail Probe Witness To Serve Out Term" and reads as follows:

Judge Eugene M. Fife Jr. of Criminal Court, Division I, yesterday ordered Charles P. McAdams to serve the remainder of his six-month jail term at the Indiana State Farm, for his own safety, after denying his request for release. 40-27-4-1

McAdams, 35 years old, triggered an investigation of the Marion County Jail in October, when he signed a statement in which he said he saw a deputy sheriff beat a prisoner, Elmer L. Reagan, 50, who later died. 40-27-4-2

Judge Fife freed McAdams on Oct. 25, commuting a six-month sentence for violation of the Offense Against Property Act, to time served. McAdams, however, repudiated his statement after he was questioned by sheriff's deputies, before and after his testimony before the grand jury, and Fife ordered McAdams' jail term reinstated. 40-27-5-1

In yesterday's habeas corpus hearings, McAdams' attorney, William C. Erbecker, attacked the reinstatement of the sentence by Fife, saying once the judge had altered the commitment to time served, the judge no longer had power to reinstate the sentence. 40-27-5-2

Fife overruled the point. However, he said that, due to reports he had received that McAdams feared for his safety in the jail, he was going to order him to serve the remainder of his term at the State Farm. 40-27-5-3

McAdams is eligible for release in February. 40-27-5-4

Exhibit 41 (to Complaint Paragraph 41).

Complaint Exhibit 41, (Tr. 97; 5289; SR 87; SE 912) is a copy of a front-page article published on December 23, 1965, which carried a four-column headline, "Brown Defense Hits Pearcy Move," and reads as follows:

The Marion County Prosecutor's Office came under sharp attack yesterday by attorneys for William A. Brown, who was indicted for second-degree murder last month in the fatal beating of a county jail inmate. 41-1-5-1

Attorneys Frank P. Huse Jr. and William F. Wurster criticized the prosecutor's office in a petition for the "premature suggestion" that Brown be subjected to a psychiatric examination to determine if he is capable of standing trial. 41-1-6-1

Judge Saul I. Rabb of Marion Criminal Court, Division 2, granted the prosecutor's request on Tuesday and appointed two doctors to examine Brown. 41-1-6-2

But Rabb declined to dismiss a writ of habeas corpus

hearing for Brown, as the prosecutor suggested. The hearing is scheduled today. 41-1-6-3

Brown's attorneys will try to show Brown was arrested and held illegally for a crime he did not commit. 41-1-7-1

In their petition to Judge Rabb, seeking to set aside the prosecutor's request, Huse and Wurster charged: 41-1-7-2

1. The prosecutor is serving a dual role as prosecutor and defense counsel for Brown. 41-1-7-3

2. The prosecutor's office implied that Brown was sane by indicting him for murder and not attempting to determine his sanity earlier. 41-1-8-1

3. The prosecutor must be acting on secret grand jury testimony since Brown never has had a hearing since his indictment. 41-1-8-2

4. Neither Prosecutor Noble R. Pearcy nor Leroy K. New or any other staff member has had personal contact with Brown, and they have no actual knowledge of his mental condition. They said the suggestion of insanity petition was filed by the prosecutor for the purpose of clouding the issues in Brown's writ of habeas corpus and as an attempt to deny him a fair and impartial hearing. 41-8-1-1

Huse said all the information legitimately available to the prosecutor's office Tuesday, when the prosecution's staff filed the petition, was available to them last August, when Brown became a suspect in the beating death of the inmate, Elmer L. Reagan. 41-8-1-2

"We can only assume that the numerous witnesses they refer to must be witnesses who appeared before the grand jury," Huse said. 41-8-1-3

Huse and Wurster said on the basis of information supplied to the prosecutor's office by a sheriff's deputy on Aug. 13, the prosecutor proceeded with the charge of second-degree murder against Brown. 41-8-2-1

"It can only be assumed that the prosecutor's office, as was its duty then," Huse said, "reviewed all of this material and concluded Brown had the mental capacity

to perform the crime so charged. They give no explanation how they are able to assert insanity so promptly after impliedly asserting Brown's sanity." 41-8-2-2

The attorneys said they were "mystified" as to how the prosecutor could be permitted to charge Brown with murder and, four months later, acting on the same information available at the time of the charge, maintain he did not have the mental capacity. 41-8-2-3

"It is also coincidental that the suggestion of insanity was filed only two days before Brown's writ hearing," Huse said. 41-8-2-4

Huse said in his petition that Pearcy's grand jury deputy, James E. Bath, inquired last week why a writ of habeas corpus had been filed for Brown instead of a plea of insanity. 41-8-3-1

Huse said he replied to Bath that he was confident of Brown's innocence and filed his plea accordingly. 41-8-3-2

Huse said the testimony of witnesses referred to in New's Suggestion of Insanity can only be testimony of witnesses before the grand jury and therefore an invasion of the secrecy of the grand jury since there never has been a hearing before any court concerning Brown's indictment. 41-8-3-3

Huse said the recent inquiry by Bath and the proceedings filed by New make it evident Brown's case has been for some time in the minds of officials of the prosecutor's office and the proceedings were filed for the purpose of clouding the issues of Brown's writ hearing, thus attempting to deny him a fair and impartial hearing. 41-8-3-4

Huse also was critical of New's use of a seldom-used statute which legally allows his office to make a Suggestion of Insanity. 41-8-3-5

"It amounts to representation of the defendant by the prosecutor who is also responsible for the prosecution," Huse said. "And the attempt to represent both parties was surely not the intent of the legislature which enacted the statute." 41-8-3-6

Huse said the appointment of two psychiatrists and a possible determination of the defendant's comprehension, before completion and a ruling on the writ of habeas corpus; could violate Brown's constitutional rights and deny him forever the opportunity to exonerate himself. 41-8-3-7

Judge Rabb accepted Huse and Wurster's petition and told them he would rule on it later. He said the writ hearing will go on as scheduled. 41-8-3-8

Pearcy declined to comment on the action by Brown's attorneys until today. 41-8-3-9

Pearcy denied his office tried to block the writ hearing. He said he did not consider the writ of habeas corpus a matter related to the issues in the case. 41-8-3-10

He said the plea to determine Brown's competence to stand trial before further proceedings were held included only pleadings and hearings which would tend to prove Brown's guilt or innocence. 41-8-3-11

Brown became the center of a controversy in August when he was charged by sheriff's investigators with beating Reagan, 50, who died of complications brought on by the injuries. 41-8-3-12

In October, another jail inmate triggered a grand jury probe of alleged brutality in the jail when he said a deputy sheriff, not Brown, had beaten Reagan on July 14. 41-8-3-13

The jail inmate later repudiated his statement. The jury investigated jail conditions four weeks and then exonerated the sheriff's office and indicted Brown in a special report. 41-8-3-14

The report was described as a "whitewash" by Judge Eugene M. Fife Jr. of Criminal Court, Division 2. 41-8-3-15

Exhibit 42 (to Complaint Paragraph 42):

Complaint Exhibit 42 (Tr. 98; 5290; SR 88; SE 916) is a copy of a front-page article published on December 24, 1965, which carried a two-column headline, "Judge Refuses To Dismiss Brown Hearing," and reads as follows:

> Judge Saul I. Rabb, of Criminal Court Division 2, yesterday refused the request of the Marion County prosecutor's office to dismiss a writ of habeas corpus hearing for a prisoner who is charged with the murder of a Marion County jail inmate. 42-1-1-1
>
> Leroy K. New, chief trial deputy for the prosecutor's office, requested that Rabb dismiss the hearing on grounds that enough evidence had been presented to warrant the detention of William A. Brown on a charge of second-degree murder. 42-1-1-2
>
> Rabb twice refused New's request, made first in open court, and later in Rabb's chambers, saying he wanted to hear the rest of the evidence before making a ruling. 42-1-1-3
>
> Before the hearing began, Rabb took notice of the fact that New had filed with the court Tuesday a Suggestion of Insanity pleading against Brown, in which New requested doctors be appointed to examine the defendant to determine his ability to stand trial. 42-1-1-4
>
> "In reading between the lines of your suggestion," Rabb said, "I got the idea that perhaps the prosecutor's office is saying an indictment should not have been returned against this defendant. This pleading could be the equivalent of a nolle by the prosecutor," the judge said. 42-1-1-5
>
> New took immediate exception to Rabb's remarks and said the prosecutor intended no such inference in filing the Suggestion of Insanity pleading, but had acted in such a manner only because Brown's counsel had failed to do so. 42-1-1-6.
>
> Brown's court-appointed attorneys, Frank P. Huse

Jr. and William F. Wurster, questioned five witnesses during yesterday's hearing. 42-1-1-7

Two of the witnesses, prisoners who were inmates of the County Jail July 14, when Brown allegedly beat Elmer L. Reagan, testified yesterday they saw the beating, but each gave different times. 42-1-2-1

George Cox, presently serving a 90-day jail term on a drunkenness charge, said he saw Brown "run and jump on a guy and kick as he kept yelling, 'I got rid of one guy.'" 42-1-2-2

Cox said the attack took place just after noon on July 14, and that Reagan was sent to the hospital late that night. 42-1-2-3

Another inmate, Thomas J. Duffy, presently serving a term at the Indiana State Penal Farm at Putnamville after a conviction for drunkenness, said he, too, witnessed Brown attack Reagan on July 14. 42-1-2-4

Duffy said the attack took place on the middle shift, sometime between 3 p.m and 11 p.m. on July 14 and that Reagan was taken to the hospital late that evening. 42-1-2-5

Both witnesses admitted during questioning by Huse and Wurster that they barely knew Reagan and Brown and couldn't give descriptions of them. Both men also were vague in their recollections about when they were questioned about the beating, or what they said when Reagan's death was brought to light and a sheriff's department investigation was begun. 42-1-2-6

However, both agreed that the basement cage, in which the alleged beating took place was a dismal, damp area of the old jail. 42-11-7-1

Huse called for another witness to the alleged beating, Vanis F. York, and was informed by New that the witness was drunk in the prosecutor's office. 42-11-7-2

"He's my witness Mr. New," Huse said. "what is he doing in your office?". 42-11-7-3

New replied, "I told you he was in our office. If you want him go get him." 42-11-7-4

New said York came to the prosecutor's office in an intoxicated condition. Why he appeared there was not explained. 42-11-7-5

Huse called for York as a witness during the afternoon session of the hearing but he still was not considered able to take the stand. 42-11-7-6

Two other witnesses, Austin O. Paff Jr. and Joseph Winburn, who reportedly gave deputies eyewitness accounts of the beating, and who testified before the grand jury did not answer their subpenas to appear for the hearing. New said repeated attempts to locate them had been futile. 42-11-7-7

Huse also raised a question in the hearing about why the names of two witnesses, Charles P. McAdams and Boone Wise, had been scratched off of the original list of witnesses presented to the court-appointed attorneys. 42-11-7-8

"Didn't both of these men testify before the grand jury in this matter?" Huse asked. "And I'd like to know why their names were removed from the list of witnesses to be called." 42-11-7-9

New said both men did testify before the grand jury and then added that neither man was in a position on July 14 to witness Brown's alleged attack on Reagan. 42-11-7-10

Huse said he learned from a prosecutor's aide that Grand Jury Deputy Prosecutor James E. Bath was responsible for removing the names of the witnesses from the list. 42-11-7-11

Dr. Marvin D. Dziabis, chief pathologist for the county coroner's office, testified yesterday that Reagan died of pneumonia brought on by 14 broken ribs. Dr. Dziabis said the fractures could have been caused by repeated kicks upon the victim's body, or by being jumped on. 42-11-7-12

He also testified that the lower part of Reagan's body bore multiple abrasions and one cut on the left chest, which could have been caused by a kick. Dr. Dziabis also said the pneumonia could have been

accelerated by lying on the cold damp floor of the jail naked. 42-11-7-13

Previous examination of medical records at Marion County General hospital disclosed that when Reagan was admitted to the hospital on July 14 he was suffering broken ribs and the early stages of pneumonia. 42-11-7-14

Huse put Sheriff Robert H. Fields on the stand briefly yesterday in an attempt to determine the exact whereabouts of all prisoners involved in Brown's case. 42-11-7-15

But Fields was allowed to leave the stand, subject to recall later, after he and New agreed to allow Huse and Wurster to examine all records and information obtained regarding Brown, and to make copies of the documents if they desired. 42-11-7-16

Judge Rabb continued the hearing, over New's objections, to Jan. 13, after Huse said he wanted to present more medical testimony and other witnesses to show his client did not commit the crime for which he is charged. 42-11-7-17

Brown's father, Henry W. Brown, also testified yesterday that he believed his son was ill and in need of medical treatment but that he should not be kept in jail. 42-11-7-18

The father said he could make a reasonable bond for his son, if necessary, but probably would not since he believes the son needs help. 42-11-8-1

"I hate to believe he could kill anyone," Mr. Brown said. . . . "I just don't want to believe it." 42-11-8-2

William A. Brown became the center of a controversy in August when he was charged by sheriff's aides as being the man who beat and kicked Reagan on July 14. 42-11-8-3

In October, another jail inmate, McAdams, touched off a grand jury probe of alleged brutality in the jail when he said a deputy sheriff, not Brown, had beaten Reagan on July 14. 42-11-8-4

McAdams later repudiated his original statement to Sgt. James Mellene. McAdam's repudiation statement was admitted into evidence at the hearing yesterday. 42-11-8-5

The grand jury conducted a four week probe of jail conditions and in November exonerated the sheriff's office and indicted Brown. 42-11-8-5

The report was described as a "whitewash" by Judge Eugene M. Fife Jr. of Criminal Court, Division 1. 42-11-8-6

Exhibit 43 (to Complaint Paragraph 43).

Complaint Exhibit 43 (Tr. 99; 5291; SR 89; SE 921) is a copy of an article published on Sunday, December 26, 1965, on page one of the second or editorial section. This article carried a six-column headline, "Palm Sunday Tornadoes Voted Big Story of 1965," and reads as follows:

The Palm Sunday tornadoes, worst natural disaster in Indiana history, were voted the state's top 1965 news story by The Indianapolis Star's staff. 43-1-1-1

The twisters, which killed 140 persons and did an estimated $100 million damage April 11 in 18 northern and central Indiana counties, were a top-heavy choice in the balloting. 43-1-1-2

In the wake of the disaster, Hoosiers contributed $568,837 to the Red Cross Tornado Relief Fund to aid the hundreds of persons injured or left homeless. 43-1-1-3

The spectacular life, death and dealings of Indianapolis securities agent Michael Dobich were a solid choice for the year's No. 2 story. 43-1-1-4

Dobich, 38 years old, was killed July 10 in a flaming helicopter crash. His death brought disclosure that his firm had failed to deliver $2.9 million in stocks it had sold and touched off a probe of the state's securities business that still is under way. 43-1-1-5

The actions of the Indiana General Assembly were voted the year's third best story. During its regular session, the legislature passed among other legislation 14 controversial "power grab" bills designed to give the mayor of Indianapolis surprising control over city and county government. 43-1-1-6

The General Assembly also appropriated $25 million toward construction of Indiana's long-awaited deep-water port at Burns Harbor on Lake Michigan. 43-1-1-7

The legislature later met in two special sessions. 43-1-1-8

One gave Governor Roger D. Branigin power to make a strong bid for Indiana as the site for a $300 million Federal atomic research installation. The other produced a state legislative reapportionment plan that satisfied a three' judge Federal panel. 43-1-1-9

The redistricting made the General Assembly a legal body by both state constitution and Federal court standards for the first time since 1927. 43-1-1-10

A Marion County Grand Jury probe of alleged brutality at the Marion County Jail, touched off by the beating death of a 50-year-old jail inmate, was voted the fourth best story of the year by The Star's staff. 43-1-1-11

The Aug. 7 death of the inmate, Elmer L. Reagan, was first reported by The Star, and a notarized statement made later by another inmate accused a jail deputy of the fatal beating. 43-1-1-12

After hearing jail brutality charges by more than a dozen prisoners and listening to 129 witnesses, the grand jury declared that the sheriff's department was not guilty of wrongdoing. The finding touched off widespread charges of a grand jury "whitewash." 43-1-2-1

The year's No. 5 story was the two major snowstorms which struck Indiana Jan. 14-16 and Feb. 24-25, paralyzing much of the state and contributing to the death of 48 persons. 43-1-2-2

The sixth story was Indiana's bid for the Atomic Energy Commission's $300-million atomic research facility. 43-1-2-3

The General Assembly voted $10 million toward supporting the Eagle Creek site, northwest of Indianapolis, and the AEC also was asked to consider sites near Clinton and Jeffersonville. 43-1-2-4

The grisly torture slaying of 16-year-old Sylvia Marie Likens rated as the year's No. 7 story. Her beaten, scalded and mutilated body was found Oct. 27 at the east side Indianapolis home of Mrs. Gertrude Wright, the mother of seven children with whom the young victim had been staying. 43-1-2-5

Mrs. Wright, three of her children and three other juveniles face charges in the slaying. 43-1-2-6

The No. 8 story was the continuing dispute over capital punishment. The legislature repealed the death penalty in its regular session but Governor Branigin vetoed the measure. 43-1-3-1

The year's ninth story was the month-long rehearsal and Sept. 20 debut of the newly formed Metropolitan Opera Company, one of the outstanding social and cultural events in Indianapolis history. 43-1-3-2

The No. 10 story of 1965 was the victory of Scotland's Jimmy Clark in the 500-Mile Race. Clark became the first foreigner to win the "500" since 1916. 43-1-6-1

TOP TEN STORIES.

1. Palm Sunday tornadoes kill 140 persons and cause an estimated $100 million damage in 18 northern and central Indiana counties. 43-1-2-7

2. Death of Indianapolis securities dealer Michael Dobich touches off wide-ranging probe of the Indiana securities business. 43-1-2-8

3. Indiana General Assembly passes 14 controversial "power grab" bills, reapportions itself and puts Governor Roger D. Branigin in position to push for Federal atomic facility for Indiana. 43-1-2-9

4. Beating death of Marion County Jail inmate brings probe of alleged jail brutality by the Marion County Grand Jury. The probe exonerated the sheriff's department of any wrongdoing, leading to charges that the investigation was a "whitewash." 43-1-2-10

5. Major snowstorms in January and February paralyze much of Indiana and kill 48 persons. 43-1-2-11

6. Indiana bids for Atomic Energy Commission's $300-million nuclear accelerator. 43-1-2-12

7. Mother of seven, three of her children and three other juveniles face charges in the torture slaying of 16-year-old Sylvia Marie Likens. 43-1-2-13

8. Governor Branigin vetoes Indiana General Assembly's repeal of capital punishment. 43-1-2-14

9. Metropolitan Opera National Company makes debut at Indianapolis' Clowes Memorial Hall. 43-1-2-15

10. Scotland's Jimmy Clark wins the 500-Mile Race. 43-1-2-16

Exhibit 44 (to Complaint Paragraph 44).

Complaint Exhibit 44 (Tr. 100; 5292; SR 90; SE 924) is a copy of front-page article published on December 28, 1965, which carried a three-column headline, "Grand Jury's Dismissal Sought By Fired Deputy," and reads as follows:

Attorneys for fired Sheriff's investigator Charles W. Haine filed a petition yesterday requesting the Marion County Grand Jury be dismissed. 44-1-1-1

The lawyers, William C. Erbecker and Sam Blum, filed the motion before Judge Saul I. Rabb in Criminal Court, Division 2, in which the jury is scheduled to report Thursday. 44-1-1-2

John T. Davis, the county prosecutor's chief deputy, said the petition "has no merit whatever," and added, "this is the first time I can recall such a pleading being

made when the person involved was not under indictment.'" 44-1-1-3

Haine was fired from the sheriff's department last October after a Sheriff's Merit Board hearing in which he was found guilty of accepting a bribe from ex-convict Leon Johnson and other charges. Haine's case is among those on which the jury is expected to report Thursday. 44-1-1-4

Witnesses who testified against Haine in the Merit Board hearing had testified earlier before the grand jury. 44-1-1-5

Haine's lawyers based their plea on these points: 44-1-1-6

1. The members of the grand jury are serving out their terms as jurors by court order. 44-1-2-1

2. The jurors have heard illegally-obtained testimony and evidence against Haine from Robert F. Squillan. 44-1-2-2

3. The grand jury is illegally constituted in that it is acting under pressure of court order and any of its investigations are the result of coercion, compulsion and undue influence. 44-1-2-3

The Haine petition asked that the grand jury be dismissed and that any of its findings or indictments in respect to Haine be voided. 44-1-2-4

Erbecker said the testimony presented to the grand jury from Squillan on Sept. 27, was not true and was presented to the grand jury against Squillan's wishes. 44-1-2-5

Haine was charged with accepting $600 from Squillan and $200 from his mother, Mrs. Florence Dagrossa, in exchange for using his influence to obtain a suspended sentence and probation for Squillan on a robbery charge in Judge Eugene M. Fife, Jr.'s Criminal Court, Division 1, last March. 44-1-2-6

Haine denied accepting the money, and Mrs. Dagrossa and her son told The Star in September that they did not give Haine any money, but had been forced to

sign statements that they had done so by Sheriff's Sgt. Felson Bowman, who visited them in Brooklyn, N. Y. 44-1-3-1

However, at Haine's hearing, Mrs. Dagrossa said she did give Haine money. Her son, who fled to Europe and violated his probation, has been arrested for making a threat on the life of President Lyndon B. Johnson. Squillan told his attorney his irrational acts were committed from fear of returning to Marion County, and facing the prison terms with which Bowman threatened him if he did not sign statements against Haine. 44-1-3-2

The members of the grand jury attempted to resign last month, but were ordered back to work due to the large number of cases pending. 44-1-3-3

The grand jurors had become angry because Judge Fife criticized their special report, which he termed a "whitewash" of alleged brutality in Marion County Jail. 44-1-3-4

Judges Rabb and Fife ordered the jurors back to work to consider evidence pending against numerous persons in jail awaiting grand jury action. 44-1-3-5

B.

SUMMARY OF COMPLAINT (WITHOUT EXHIBITS) AND ANSWER.

The complaint and answer are found at Tr. 3-101; 300-330; SR 1-91; 92a-97b.

The first eleven rhetorical paragraphs of each of the 44 paragraphs of complaint, and the answers thereto (immediately following each such rhetorical paragraph as set forth below) are identical and as follows:

"1. Plaintiff is, by profession, an attorney-at-law, and was Sheriff of Marion County at all times mentioned herein."

"1. Admit the allegations contained in rhetorical paragraph 1."

"2. Defendant, Indianapolis Newspapers, Inc., is an Indiana Corporation. It, and defendants Eugene C. and Eugene S. Pulliam, publish a newspaper, 'The Indianapolis Star,' which has an average circulation of 225,584 each week day and 360,742 on Sunday."

"2. Admit the allegations contained in rhetorical paragraph 2."

"3. For many months before the publication specified in Paragraph 12 hereof, defendants harbored actual malice toward plaintiff. Motivated thereby, defendants induced certain unveracious and supine persons to furnish them with false statements, both written and oral, with the understanding defendants would not hold such statements in confidence but would publish same, as a facade for the basis of the defamatory matter specified in Paragraph 12 hereof. Defendants knew some of said statements were false and recklessly disregarded whether or not any of them were false."

"3. Deny the allegations contained in rhetorical paragraph 3."

"4. In the composition of the defamatory matter specified in Paragraph 12, defendants employed said false statements, so induced by them, and interlarded same with their own false and deceptive statements and comments, in some cases attributing falsehoods of their own authorship to unidentified and mythical persons, dovetailing all together, link by link, and imprinted upon the whole composition, and the publication thereof, their own imprimatur."

"4. Deny the allegations contained in rhetorical paragraph 4."

"5. Except for the statement of one Charles P. McAdams, a copy of which plaintiff has, plaintiff is unable to specify, with certainty, which (Summary of Record, p. 1) falsehoods were of defendant's sole authorship, which were procured from unveracious or supine persons, and which were in fact of defendants' own authorship but attributed to mythical persons, because this information is peculiarly within defendants' own knowledge and control."

"5. Deny the allegations contained in rhetorical paragraph 5, including the erroneous assumption therein that defendants authored or procured falsehoods concerning plaintiff."

"6. In the publication specified in Paragraph 12, defendants charged plaintiff with the commission of certain crimes."

"6. Deny the allegations contained in rhetorical paragraph 6."

"7. Plaintiff was innocent of said crimes and defendants knew it."

"7. Are without information as to the allegations contained in rhetorical paragraph 7."

"8. Prior to the matters complained of, plaintiff enjoyed a good reputation."

"8. As to rhetorical paragraph 8, are without information as to whether plaintiff enjoyed a good reputation personally or as a lawyer, but deny

that plaintiff enjoyed a good reputation as sheriff of Marion County."

"9. His good reputation was ruined by the publication specified in Paragraph 12, resulting in his being held up to public scorn, shame and disgrace, to his damage as prayed herein."

"9. Deny the allegations contained in rhetorical paragraph 9."

"10. Three days before filing this action, plaintiff served defendants a notice and demand to retract the specified defamatory matter, a copy of which is hereto attached as Exhibit 44*, to which was attached a complete copy of this complaint, including all paragraphs thereof, and Exhibits 1 through 44 attached thereto."

"10. Admit, as to rhetorical paragraph 10, that three days before filing this action plaintiff served defendants a notice and demand to retract, a copy of which is attached to plaintiff's complaint as Exhibit 44A, to which exhibit was attached a copy of plaintiff's complaint, including all paragraphs (Summary of Record, p. 92(a) thereof, and Exhibits 1 through 44, attached thereto, but deny that said notice and demand to retract specified the statements in said publications which plaintiff alleged to be false and defamatory as required by Chapter 45, Section 1,

* Complaint Exhibit 44A (Tr. 101, 5804; SR 91; SE 927-928) reads in pertinent part as follows:

"The attached unfiled complaint and Exhibits 1 through 44 are expressly incorporated into this notice. It specifies the statements and meanings in each of the 44 publications alleged to be false and defamatory.

"On behalf of Robert H. Fields, and without waiving the question of malice by the serving of this statutory notice, demand is made for a full, true and unequivocal retraction of the several alleged defamations commensurate with space and time devoted to the publication thereof.

"If, for any reason, this notice is not clear you, or someone on your behalf, may seek clarification, which will be cheerfully furnished."

of the Acts of 1895 of the State of Indiana (Burns' 2-1043)."

"11. Defendants, in order to gratify their malice, aforesaid, published the printed matter specified and otherwise identified in Paragraph 12 by date and exhibit number. Said defamatory matter is a clipped, pasted and dated photocopy of the entire published matter in which the defamatory or explanatory matter appeared and identified by assigned exhibit designation: For reference purposes, it is interlined with four ciphers at the end of each paragraph designating respectively, (1st) the exhibit number in which the paragraph appeared; (2) the page of the issue of 'The Indianapolis Star' on which the paragraph appeared; (3rd) the column on said page in which the paragraph appeared, and (4th) the paragraph number in said column, as the whole exhibit appeared on the original page, unclipped, from that issue of 'The Indianapolis Star'."

"Deny the allegations contained in rhetorical paragraph 11."

Rhetorical paragraph 12 of each of the 44 paragraphs of complaint alleges that defendant published the exhibit referred to therein, "having theretofore maliciously and with premeditated purpose to so do, composed same so as to cause it to convey the false and defamatory meanings set forth below when read in full context, and in context with previously published [complaint exhibits]." Then follows, in each rhetorical paragraph 12, the alleged false and defamatory meanings about plaintiff, allegedly conveyed by the exhibit attached thereto who so read in full context and in context with previously published complaint exhibits. With respect to each such exhibit, it was alleged that when so read it conveyed one or more of the following false and defamatory meanings about the plaintiff:

1. *Alleged Accusations of Crime Against Plaintiff With Respect to the Death of Elmer L. Reagan.*

(Each of Complaint Paragraphs and Exhibits 1 through 4 and 6 through 14.)

"a. That plaintiff's deputies, or members of the Marion County Police Force, over whom plaintiff had direction and supervision, had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, and that plaintiff assisted said deputies, as hereinafter alleged, with intent that they would escape punishment." (SR 3)

"b. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or otherwise prosecution to be commenced, against one William A. Brown for the aforesaid murder or felonious homicide of said Elmer L. Reagan, or conspired with others for said purpose." (SR 3)

"c. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, plaintiff corruptly, and by force and threats, endeavored to influence, intimidate and impede a witness, to-wit: Charles P. McAdams; in a certain court of the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and, by the same means endeavored to obstruct and impede the due administration of justice therein." (SR 3)

2. *Alleged Accusation of Crime Against Plaintiff With Respect to the Beating of Arthur L. Derringer.*

(Each of Complaint Paragraphs and Exhibits 2 through 6.)

"That plaintiff, by his subordinates, deputies or members of the Marion County Police Force, over whom he had direction and supervision, by acquiescence in their conduct, knowingly and unlawfully inflicted great bodily harm and disfigurement upon Arthur L. Derringer, then and there a prisoner in the Marion County Jail." (SR 4)

3. *Alleged Accusations of Crime Against Plaintiff With Respect to the Beating of James P. Dearing.*

(Complaint Paragraph and Exhibit 5.)

"That plaintiff, by subordinates, deputies, or members of the Marion County Police Force, over whom he had direction and supervision, by acquiescence in their conduct, and with intent to kill James P. Dearing, perpetrated an assault and battery upon said James P. Dearing, being then and there a prisoner of the Marion County Jail, with intent to kill said James P. Dearing." (SR 6)

4. *Alleged Accusations of Crime Against Plaintiff With Respect to the Beating of Denzil Loren Neville, Jr., and an Unidentified "Old Man."*

(Complaint Paragraph and Exhibit 7.)

"That plaintiff, by his subordinates, deputies or members of the Marion County Police Force, over whom he had direction and supervision, by acquiescence in their conduct, knowingly and unlawfully inflicted great bodily harm and disfigurement upon Denzil Loren Neville, Jr. and an unidentified 'old man,' then and there prisoners in the Marion County Jail." (SR 8)

5. *Alleged Accusations of Crime Against Plaintiff With Respect to the Beating of Jimmy Harold Green and an Unidentified "Old Man."*

(Complaint Paragraph and Exhibit 7.)

"That plaintiff, by subordinates, deputies, or members of the Marion County Police Force, over whom he had direction and supervision, by acquiescence in their conduct, and with intent to kill Jimmy Harold Green and an unidentified 'old man,' perpetrated an assault and battery upon said Jimmy Harold Green and the unidentified 'old man,' they being then and there prisoners of the Marion County Jail, with intent to kill said Jimmy Harold Green and the unidentified 'old man.'" (SR 8)

6. *Alleged Accusations of Crime Against Plaintiff With Respect to the Prosecution of His Deputy Charles W. Haine, for Accepting a Bribe.*

"That in order to prosecute one of plaintiff's deputies, or a member of the Marion County Police Force, to wit: Charles W. Haine; over whom plaintiff had direction and supervision, for accepting a bribe as such deputy, or as such member of the Marion County Police Force, plaintiff, by his subordinate Felson Bowman, another deputy or member of the Marion County Police Force, corruptly and by force and threats endeavored to influence, intimidate and impede witnesses, to-wit: Robert F. Squillan and Florence DaGrossa, in a certain court of the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and by the same means endeavored to obstruct and impede the due administration of justice therein." (Each of Complaint Paragraphs and Exhibits 8, 9, 10, 16, 17, 28, 31, 36 and 44). (SR 9)

"That plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or other prosecution to be commenced, against one Charles W. Haine for receiving or accepting a bribe, or con-

spired with others for said purpose." (Complaint Paragraph and Exhibit 36). (SR 27)

7. *Alleged Accusations of Crime Against Plaintiff with Respect to the Deaths of Elmer L. Reagan and Danner Crick.*

(Each of Complaint Paragraphs and Exhibits 15, 18 through 27, 29 through 35, and 37 through 44.)

"a. That plaintiff's deputies, or members of the Marion County Police Force, over whom plaintiff had direction and supervision, had murdered, or otherwise committed felonious homicide, upon one Elmer L. Reagan and one Danner Crick, then and there prisoners of the Marion County Jail, and that plaintiff assisted said deputies with intent that they would escape punishment for the homicide of Elmer L. Reagan, as alleged in sub-paragraphs (b) and (c) hereof, and by concealing the homicide of Danner Crick." (SR 14)

"b. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or otherwise prosecution to be commenced, against one William X. Brown for the aforesaid murder or felonious homicide of said Elmer L. Reagan, or conspired with other for said purpose." (SR 14)

"c. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, plaintiff corruptly, and by force and threats, endeavored to influence, intimidate and impede a witness, to-wit: Charles P. McAdams, in a certain court of the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and, by the same means endeavored to obstruct and impede the due administration of justice therein." (SR 14)

8. *Alleged Accusations of Crime Against Plaintiff with Respect to the Death of Danner Crick.*

(Complaint Paragraphs and Exhibits 16 and 17.)

"That plaintiff's deputies, or members of the Marion County Police Force, over whom plaintiff had direction and supervision, had murdered or otherwise committed felonious homicide, upon one Danner Crick, then and there a prisoner of the Marion County Jail, and that plaintiff concealed said homicide with intent that his deputies would escape punishment." (SR 15)

For example, rhetorical paragraph 12 of Complaint Paragraph 44, reads as follows:

"12. Tuesday, December 28, 1965, defendants maliciously published the printed matter reflected in Exhibit 44, hereto attached, having theretofore maliciously and with premeditated purpose to so do, composed same so as to cause it to convey the false and defamatory meanings set forth below when read in full context, and in context with previously published printed matter, by defendants, as shown by Exhibits 1 through 43, which were published beginning October 27, 1965 on 36 consecutive days, and on December 3, 1965, December 11, 1965, December 15, 1965, December 18, 1965, December 23, 1965, December 24, 1965 and December 26, 1965, and which contributed to the meaning of Exhibit 44, as hereinafter alleged, and for that purpose are, by reference, made a part of Paragraph Forty-Four.

"(a) That plaintiff's deputies, or members of the Marion County Police Force, over whom plaintiff had direction and supervision, had murdered, or otherwise committed felonious homicide, upon one Elmer L. Reagan and one Danner Crick, then and there prisoners of the Marion County Jail, and that plaintiff assisted said deputies with intent that they would escape punishment for the homicide of Elmer L. Reagan, as alleged in sub-paragraphs (b) and (c) hereof, and by concealing the homicide of Danner Crick.

"(b) That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or otherwise prosecution to be commenced, against one William A. Brown for the aforesaid murder or felonious homicide of said Elmer L. Reagan, or conspired with others for said purpose.

"(c) That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide, upon one Elmer L. Reagan, plaintiff corruptly, and by force and threats, endeavored to influence, intimidate and impede a witness, to-wit: Charles P. McAdams, in a certain court of the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and by the same means endeavored to obstruct and impede the due administration of justice therein.

"(d) That plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or other prosecution to be commenced, against one Charles W. Haine for receiving or accepting a bribe, or conspired with others for said purpose.

"(e) That in order to prosecute one of plaintiff's deputies, or a member of the Marion County Police Force, to-wit: Charles W. Haine, over whom plaintiff had direction and supervision, for accepting a bribe as such deputy, or as such member of the Marion County Police Force, plaintiff, by his subordinate, Felson Bowman, another deputy or member of the Marion County Police Force, corruptly and by force and threats endeavored to influence, intimidate and impede witnesses, to-wit: Robert F. Squillan and Florence Dagrossa, in a certain court of the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and by the same means endeavored to obstruct and impede the due administration of justice therein." (Tr. 42; SR 32)

The answers to rhetorical paragraphs 12 of each of the 44 complaint paragraphs are identical (except for Exhibit number) and read as follows:

> "12. Admit that they published Exhibit (*) to plaintiff's complaint, but deny the remaining allegations of rhetorical paragraph 12; and allege that said publication contained a substantially true account of the matters reported therein with fair comment thereon, and that said publication was privileged and was published without malice."

The prayers of the 44 complaint paragraphs were also identical:

> "Wherefore, plaintiff prays judgment for $51,872.41 and costs."

The total damages sought were $2,282,386.04.

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* Here there was inserted in each such paragraph of answer the Exhibit number corresponding to the Exhibit number in each of the 44 complaint paragraphs to which the answer was directed.

C.

DEFENDANT'S MOTION FOR A PRETRIAL ORDER RULING INADMISSIBLE EVIDENCE OF PRIOR ILL WILL

In advance of trial defendant moved the trial court for a pretrial order ruling inadmissible evidence of prior ill will, which motion reads as follows (omitting caption and signatures):

> "Defendants herein move the Court for a pretrial order to the effect that evidence tending to show that defendants published the articles sued upon out of hatred or hostility toward the plaintiff shall not be admissible in the trial of this cause as evidence that defendants published said articles with knowledge that they were false or with reckless disregard of whether they were false or not.
>
> "As grounds for this motion defendants would show the Court the following:
>
> 1. Plaintiff in this action is complaining solely about alleged defamatory criticism of his official conduct as a public official.
>
> 2. Defamatory criticism of the official conduct of a public official is qualifiedly privileged under the First and Fourteenth Amendments to the U. S. Constitution.
>
> *New York Times* v. *Sullivan* (1964), 376 U. S. 254, 11 Law. Ed. 2d 686.
>
> 3. A public official can recover damages for such criticism if, and only if, he can prove that defendants published it either with knowledge that it was false or with reckless disregard of whether it was false or not.
>
> *New York Times* v. *Sullivan* (1964), 376 U. S. 254, 11 Law. Ed. 2d 686.

4. Evidence tending to show that the publisher of such criticism acted out of hatred or hostility toward said public official is not relevant to the issue of whether such criticism was published with knowledge that it was false or with reckless disregard as to whether if was false or not, by virtue of the First and Fourteenth Amendments to the U. S. Constitution.

Garrison v. *Louisiana* (1964), 379 U. S. 64, 13 Law. Ed. 2d 125.

5. Plaintiff's discovery in this case demonstrates that he is relying primarily, if not exclusively, upon such inadmissible evidence and that he is planning to spend weeks offering into evidence a large number of documents and the testimony of a great number of witnesses for no other purpose than to attempt to show hatred and hostility on the part of defendants toward plaintiff. If this evidence is inadmissible, as defendants believe, considerable time and expense could be saved if this Court would so rule in advance of trial.

Wherefore, defendants pray that this motion be granted." (Tr. 578; SII 97b-97c)

Such motion was overruled by the trial court. (Tr. 658; SR 98a)

D.

SUMMARY OF RECORD AS TO PRIOR ILL WILL EVIDENCE ADMITTED AND OBJECTIONS THERETO.

The following is a summary of the record below with respect to evidence of prior ill will which was admitted over defendant's objections:

That in November and December of 1964,* a heated controversy developed between Sheriff Fields and Star reporter Rick Johnson concerning Fields' policy with respect to releasing news; that on November 17, 1964, the body of a man, Lee Hynes, who had been shot to death, had been found in Big Eagle Creek in Indianapolis; that shortly afterward, the Sheriff's Department had arrested three suspects and early in the morning of November 18, 1964 had charged two of the three with murder, the third having been released as innocent; that the murder weapon had not been found until 5 a.m. that morning; that the Sheriff's Office had not released any news about the arrests and charges until after the murder weapon had been found to prevent accomplices from destroying the evidence (Tr. 6239-6241; SE 983-984); that afterward on November 18, 1964, Star reporter Johnson had telephoned Fields at his home accusing Fields of withholding news from the Star concerning the Hynes murder (Tr. 6241-6243; SE 984-985a); and that on December 3, 1964, Johnson again called Fields and in a profane and abusive manner again accused Fields of withholding information concerning two accused shoplifters at which time both lost their tempers (Tr. 6244-6245; SE 985a-986), and the following article was then published in the Star on December 4, 1964:

* The first publication sued upon was published October 27, 1965.

"Sheriff's Aide 'Silent' In Arrest of 2.

"A check last night of the names of two women arrested on shoplifting charges revealed an attempt evidently has been made to silence sheriff's office assistants who might talk to the press.

"A matron in the women's division at the Marion County Jail told a reporter for The Indianapolis Star: 'I am not permitted to speak with reporters.'

"She added, 'I am not authorized to give them any information without an OK from a higher authority.'

"Queried, Sheriff Robert H. Fields said there were 'no rules against releasing names of people in routine arrest.' He would not define 'routine,' but declared that in major cases he alone will make releases of information.

"The issue arose when the reporter sought to verify with the jail matron the names of two persons arrested about 6:10 p.m. yesterday at Ayr-Way South, 3700 South East Street, by Edward Donahue, an off-duty city policeman and special deputy.

"The sheriff's office report said that Donahue apprehended the two women after he saw them place merchandise valued at a total of $40, under their clothing and in their purses and leave the store without paying. Both face a charge of violation of the Offense against the Property Act (petit larceny) and were scheduled into Speedway Magistrate Court Monday." (Plaintiff's Exhibit 124; Tr. 4141; SE 508)

That Fields posted a notice that Johnson was banned from receiving information from the Sheriff's office; and that around midnight on December 4, 1964, Johnson called Fields at home again and that they had the following conversation:

> Well he opened the conversation, he said "This is Rick Johnson", he says "Are you serious about banning me from getting news down at the Sheriff's Office?" I said, "Yes, I'm very serious about it."

He said, "You don't think you can get away with that, do you?" I said, "Well, unless we get this thing straightened out, that's the position I'm gonna take." I says, "As a private individual, I don't intend to be talked to like that, and I don't think the public official . . . being a public official makes it necessary to take that kind of abuse from you." He says, "Well, I'm gonna keep you on the front page of the newspaper just as long as it takes." I said, "Rick, you do what you have to do, I'll do what I have to do." He said, "That's what I'm gonna do, and he says I'm gonna expose you for what you really are." I says, "Well, what is that?" He says, "You're a stooge of Noble Pearcy. I'm gonna keep you on the front page of the . . . gonna keep you in headlines on the front page as long as it takes." And hung up. (Tr. 6247-6248; SE 986-987)

That on December 5, 1964, the following article was published in The Star:

"*Sheriff's Reports Denied Reporter.*

"Sheriff Robert H. Fields yesterday ordered all news of his office withheld from a police reporter for The Indianapolis Star.

"Sheriffs' deputies refused to let reporter Rick Johnson see the investigation reports in the sheriff's office and told him that they were acting on orders of the sheriff.

"Fields admitted in a conversation with Johnson that the order was directed specifically against Johnson, although there have been indications of an increasing news blackout by the sheriff's office in recent weeks.

"Fields and Johnson clashed Nov. 18 when Johnson attempted to obtain information about the slaying of Lee S. Hynes, whose bullet-riddled body was found in Big Eagle Creek near West Tenth Street the preceding night.

"Johnson questioned the sheriff at that time on

why he withheld information on deputies picking up two suspects in the case about four hours after the slaying. The men were subsequently arrested in the slaying.

"Fields replied, 'It wasn't authorized.' He also told Johnson, 'You won't get anything on any case if there's even a slight chance it would hurt the investigation.'

"They clashed again Thursday night when Johnson attempted to check out information on two persons arrested on shoplifting charges with the jail matron.

"She told him, 'I can't give this information out without the sheriff's authorization and I'm not supposed to talk to reporters.'

"When Johnson protested this ban on information to Fields, he and the sheriff engaged in a heated debate on the telephone in the hearing of jail personnel.

"Fields said last night that his policy has always been the same, that everything is open to the press and that 'officers have been instructed to give reporters all the information they have except when such information might jeopardize an investigation.'

"Deputy sheriffs disputed that statement.

"The ban against Johnson was issued yesterday morning, Fields said, because of the heated discussion." (Plaintiff's Exhibit 126; Tr. 6265; SE 995.)

That Johnson again telephoned Fields at home around midnight on December 5, 1964, and that they had the following conversation:

Well he says, "This is Rick Johnson." He said, "I want to know . . . want to check to see if that ban on me getting news down here is still on." I says, "Yes, it certainly is." He says, "I thought you'd be interested in the fact that I'm sitting down here in the office right now going through these reports." I said, "Who's the Officer on duty?" He said, "Lieutenant French." I said, "Will you kindly put him on the telephone, I said "Does Rick Johnson have the re-

ports down there?" And he says, "Yes." I said, "He's under ban of news, so you take those reports away from him, and he's under ban." And I asked him why he gave them to him, and he said he had been on vacation and didn't know about it. He'd just went on duty that night. So I told him to put Rick back on the telephone, and he came on, and I said, "Rick, I just told French to take those reports away from you and the ban will continue until we get this thing straightened out, you are to act like a human being." And he says, "Well, I told you what I was going to do, I'm gonna keep you on the front page of the paper as long as it takes to shape you up." He said, "I want you one other thing." I said, "What's that?" And he says, "You remember what happened to your predecessor . . ." (Tr. 6248-6249; SE. 987-988)

That on December 6, 1964, the following article was published in The Star:

"*Fields' Muzzling Holds Up News.*

"Marion County Sheriff Robert H. Fields is shooting for real trouble with a policy of muzzling his employes, as illustrated by the ridiculous situation last week when a jail matron refused to give a reporter the names and similar information on two women under arrest on shoplifting charges.

"I am not permitted to speak with reporters," the dutiful employe stated. Fields claims he has told his workers they can disclose "routine" information—but naturally some of them are going to play it safe by saying nothing, when the boss has a big thing about secrecy.

"Recently, Fields' deputies did some outstanding police work, making three arrests within four hours after a beaten man's body was found in Big Eagle Creek. But he and they missed a chance to look good in the public's eye. The arrests were not disclosed that day. 'I didn't authorize it,' Fields says. (Plaintiff's Exhibit 127. Tr. 4139; SE 507-508)

That during this period (December of 1964) Fields was telling Noble R. Pearcy, Marion County Prosecutor, that Johnson was calling him at home, late at night, and claiming he couldn't get information when in fact he could (Tr. 4137; SE 507); that Johnson said to Pearcy during this period, about Fields, "I'm going to get the son-of-a-bitch and he'd better remember what happened to his predecessor; that Fields' predecessor, Sheriff James O. Hiner, had died of ulcers (Tr. 4142; SE 509); that during this period, Virginia Wilkes, the law librarian at the City-County Building, heard Johnson call Fields an S. O. B. and say that if it took a year he would get even with him (Tr. 6925-6927; SE 1115-1115a); and that during this period an Indianapolis policeman heard Johnson say, about Fields: "I'll kill the son-of-a-bitch. Politically, I'll kill him (Tr. 6696-6697; SE 1081).

That on December 7 or 8, 1964, Fields telephoned Johnson's superior at The Star, City Editor Lawrence Connor and talked to him about the controversy he was having with Johnson. Fields described this conversation as follows:

> A. He was aware of the controversy between Rick and I and aware of the fact that I had banned him from news down there and I tried to explain to him the reason for that.
>
> Q. Just tell the Jury what you said to him and what he said to you.
>
> A. Well, I told him about the Lee Hynes Murder Case and the shoplifter case, and explain my side of it, just as I've told here, and he said, he told me . . . he said, no you apparently got a policy of secrecy down there, you're not releasing news when you should, and he didn't agree that this policy that I explained to him was a proper policy, and he went right down the line . . . it was Rick Johnson's right, in the position he took with me, and at that time, that was the conversation. I concluded there was no point in continuing the conversation. (Tr. 6252; SE 989)

On December 10, 1964, the following editorial was published in The Star:

> "*A Dangerous Practice.*
>
> "Sheriff Robert Fields' decision to shut off information to a reporter for The Indianapolis Star is one of those steps backward toward 'the king can do no wrong' dictum governing official suppression of information.
>
> "Rick Johnson, the reporter, was not acting as an individual but as a representative of the press and the public when he sought the facts which Fields refused to give him.
>
> "Police officials in monarchical times refused to release information because 'the king can do no wrong.' Police authorities in modern totalitarian states such as Nazi Germany, Fascist Italy, Red Russia, Red China, Red Cuba and the captive nations refuse to release information because 'the state can do no wrong.'
>
> "The principle behind these policies is, of course, absurd. The king can do wrong. The state can do wrong. So can a sheriff.
>
> "Police authorities claim many reasons for refusing to release information. The reasons are almost always the wrong ones. Suppression often stems simply from the fact that power has an intoxicating effect on a man. It goes to his head. He wants to exercise it.
>
> "Police secrecy is to be expected in Moscow, Lenigrad, Budapest, East Berlin, Havana or Peking. It is a standard tool of dictatorship. But it is out of place in Indianapols and Marion County." (Plaintiff's Exhibit 128; Tr. 6266; SE 995-996)

That on December 19, 20 and 22, 1964 articles were published in the Star which were critical of Sheriff's Executive Officer, Major Alva Funk, for accepting a courtesy car from a local car dealer, and of Fields for saying

it was alright for him to keep it. (Tr. 6256-6260; Plaintiff's Exhibits 129, 130 and 131; SE 992-993).

That late in December, 1964, Fields and Johnson had the following conversation:

> He asked me if I was aware that Funk had worked on his vacation, during the State Fair, and I could see from his attitude that he was very belligerent with Funk and me both, and I stated "No comment". He asked me about five or six different questions . . . about Funk, if I was aware of various things, and I just answered all of his questions with no comment. After about five or six questions he stated, you're pretty God damn cocky, aren't you. I says, no, I don't think I'm cocky, but I think, you are, and I turned around and walked out of the office. (Tr. 6253; SE 990)

That on December 27, 1964, the following article was published in The Star:

> "*Funk Made His Vacation Pay.*
>
> "Alva R. Funk, Marion County Sheriff's office executive officer, managed to make his vacation pay off during 1964 to the tune of $451 by grabbing off the job of assistant traffic director during the Indiana State Fair, Aug. 27 to Sept. 9.
>
> "The first half of Funk's vacation was a non-profit sojourn to Florida with his family from June 1 to 8. But Funk quickly recouped his losses by using the second half of his allotted vacation time, plus 'accrued days off' to work at the fair.
>
> "Many deputies, questioned the fact that Funk was able to get his vacation during the State Fair, have wondered if he wasn't needed then, is he needed at all?
>
> "A few days before the discovery of Funk's paying vacation, it was learned he had ben given a 'courtesy car' by a local car dealer and had applied to the County Commissioners for free servicing.
>
> "Funk canceled the request when he learned a re-

porter was checking the tip, and the commissioners rescinded their approval of the request." (Plaintiff's Exhibit 133, Tr. 6255; SE 990-991)

That on January 10, 1965, the following article was published in The Star:

"*Sheriff's 'Brass' Not Following Rules.*

"It seems that some of the brass in Sheriff Robert M. Fields' office do not have to follow the rules that bind deputies—even on reporting accidents they have in county-owned cars.

"It was discovered last week that Capt. Bernard Gohmann of the civil office had a wreck outside the jail in October and never bothered to make out an accident report form. The driver of the other car in the accident was David Klapper, who headed the jail commissary under the late Sheriff James O. Hinor.

"Gohman said the county-owned car was not damaged, and damage to Klapper's car was $31 to $41. Insiders at the sheriff's office said normal routine would require Gohmann to make an accident report and face the department's accident review board for a determination of whether the accident was chargeable to him. Chargeable accidents can cost a deputy days off or even a suspension, one reported. 'But of course it depends who you are,' he added.

"When questioned about the accident Gohmann stated, 'I probably should have made out reports, but I sent the sheriff a memo on the incident.'" (Plaintiff's Exhibit 134, Tr. 6377; SE 1017-1018)

That on January 15, 1965, at the urging of Noble R. Pearcy, Marion County Prosecutor, a peace meeting between Fields and Johnson was held in the Columbia Club in Indianapolis, with the following result:

Well in substance he said we had this bad policy down there on news and in substance I told him that I was convinced that it was the only proper policy,

we both gave our sides of the same controversy and discussed it in a friendly manner. However, we both admitted that we previously had flown off the handle probably a little premature, our attitudes and we wanted to shake hands and I told him that even though we, in effect, we agreed to disagree on this particular matter, as long as I was satisfied that he could discuss it like a reasonable man that I told him that I'd go ahead and lift the ban on him, which I did. (Tr. 6261; SE 994-995)

That Fields then had a notice posted, lifting his ban that Johnson was banned from securing news from the Sheriff's Department. (Tr. 6669-6671; SE 1075)

That shortly after this, Deputy Sheriff Felson Bowman saw Johnson and said to him, "Well, I see you and my boss are getting along now," and Johnson replied, "Well, the son-of-a-bitch kissed the book." (Tr. 3343-3345; SE 405-405a)

That prior to the publication of the articles sued upon, during the period August 8, 1965 through October 25, 1965, the Star published numerous articles and editorials which were critical of Fields and the Sheriff's Department and which pertained to charges made by Fields that one of his deputies had taken bribes, stolen a prisoner's funds and possessed narcotics; counterchargges by the accused deputy that he had been framed and that Fields had been "used" to frame him; the vicious beating of a prisoner in the jail which had been kept secret for four weeks; the lack of records in the Sheriff's Department to reflect anything about such beating when it had finally been made public after the prisoner had died; a charge by the Sheriff's Department (within two days after the beating had been made public) that a mentally incompetent jail prisoner had been responsible for the beating and death; the theft of $1171 (being held as evidence) from a locked file

cabinet in the Sheriff's Department which had been kept secret for four months; the suspension of a deputy sheriff for breaking into the dog pound, which had been kept secret for five weeks; and the subsequent trial of the deputy accused of bribery before the Sheriff's Merit Board, the finding that he was guilty of such charges, and his discharge as a deputy sheriff. (Plaintiff's Exhibits 191, 191A, 192, 193, 194, 180, 184, 203, 204, 210A, 211, 212, 214, 215, 218, 222, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236; Tr. 2521-2561; SE 100a-157)

That there were some inaccurate statements in some of these articles; that the article published on August 13, 1965 (written August 12) about the loss of $1171 from the Sheriff's Department which had been kept secret since April of 1965, had stated that the matter had just been made public, when in fact Fields had reported it orally and in writing (for the first time) at a meeting of the County Council on August 10, 1965, and that another of appellant's reporters (not Johnson who had written the article about the missing money) had been present at that meeting, although it was not known whether he had heard or seen appellee Fields' report about it. (Tr. 4518-4535; SE 596-600a; Plaintiff's Exhibits 179 (Tr. 4528), 179G, pp. 20 and 21 (Tr. 4525-4526), 179G, pp. 32 and 33 (Tr. 4533-4534); Tr. 6308a-6325; SE 1005-1008); and that one of the articles pertaining to the Merit Board proceedings against the deputy sheriff for accepting bribes and stealing funds of a prisoner had not accurately reported the testimony of that prisoner at the Merit Board hearing and that the reporter (Johnson) who wrote the article had been present at the hearing during such testimony. (Tr. 7262-7268; SE 1177-1178a)

Defendant objected to all such evidence on the following ground:

"Mr. Scanlon: . . . On the question of malice, this case being brought by a public official, that malice can only be proved by the plaintiff sustaining the burden of proving that the statements contained in the articles, which are attached to the complaint, that statements contained in those articles are false, or published them in reckless disregard of truth or falsity, and that they gave rise to the meanings which plaintiff has alleged, which the defendants knew were false. . . . [M]alice can no longer be established by ill will under the New York Times case and the Garrison case and the other Supreme Court cases. . . . Such evidence would be prejudicial, not relevant and defendants therefore object. . . ."

"Mr. Jacobs: . . . [W]e must prove that the defendants published these articles on which the complaint is based with knowledge of their falsity or with a reckless disregard as to whether they were false or not. But it is not the New York Times decision that all evidence of ill will prior to the publication is admissible, the New York Times decision, not neither did the Garrison decision, deal at all with how you would prove knowledge or reckless disregard. Now its always been admissible when you're trying to show motive or state of mind, to show the relationship between the parties immediately before. It's the same as in a homicide case, if you attempt to . . . the defendant may say, why I wouldn't kill that man, he's a friend of mine, I honestly thought he was drawing a gun on me. It would certainly be admissible to show that he had ill will or threatened him before. . . . It's the same in a defamation case. The defendants are going to say why we didn't know, or we believed that was true. Now if they had ill will against the plaintiff, and expressed it, they would be more apt, it would tend to prove, they would be more willing to publish something false. The New York Times decision did not deal with the evidentiary question in any respect whatever, it simply dealt with the ultimate fact that had to be proved, that is knowledge of falsity or reckless disregard."

"Mr. Scanlon: . . . On the premalice issue, on the question of whether evidence . . . of ill will on the part of defendants toward the plaintiff is admissible, there counsel for the plaintiff and we are diametrically opposed and we sincerely and earnestly urge upon the Court that the New York Times case and the cases following it can only be interpreted to the effect that malice can only be proved by proof of knowledge of knowledge of falsity or reckless disregard and that evidence of ill will or hatred, disposition on the part of defendants toward the plaintiff, all that type of evidence that was formerly considered to be relevant to establish malice is now banned and irrelevant, prejudicial, so that on that you've got a direct conflict between the plaintiff's legal position and our legal position, and we want to make our position absolutely plain that the decisions of the Supreme Court in New York Times and following them, stand for the proposition that malice can only be proven by proof of knowledge of falsity or reckless disregard and that any introduction of any evidence with respect to ill will or hatred would be error. Now we don't want to delay the trial, but we want to make that position clear, and it will be our position in case the Court doesn't follow it on this occasion, we will continue to urge it upon the Court because we are very sincere in believing that's the law."

". . . .

"Judge: Objection overruled." (Tr. 2521-2532; SE 100a-100e)

E.

SUMMARY OF RECORD AS TO MATTERS ADMITTED INTO EVIDENCE ABOUT WHICH DEFENDANT HAD NO PRE-PUBLICATION KNOWLEDGE, AND OBJECTIONS THERETO.

The following is a summary of the record below with respect to matters admitted into evidence about which defendant had no prior publication knowledge, over defendant's objections:

Testimony that appellant had published the statements of jail prisoners about conditions in the jail without checking available court records, police records, jail records, hospital records and other records pertaining to such prisoners, without checking with other alleged witnesses to the events described, without checking with the jail deputies who had been accused of wrongdoing, and without checking with other persons, such as city policemen, jail doctors, jail chaplains and other deputies, who were in the jail from time to time. (Tr. 5003-5007; 5125-5128; 5134-5136; 5142-5144; 5314-5316; 5522-5523; 5546-5547; 5558-5559; 5635-5637; 6069-6070; 6112-6113; SE 676-678; 689d-689k; 728b-728d; 831-831a; 833-834b; 837-837a; 968-968a; 972-972a)

Copies of court records and police records (from Marion County, other counties in Indiana, and from other states) reflecting the details of the criminal records (arrests, indictments, affidavits, pleas, transcripts, convictions, probation reports, psychiatric reports, sentences, letters to the judge, etc.) of the following persons whose statements about jail conditions were published in the articles sued upon: Billy Anthony, James Daniels, Jack Dearing, James Dearing, Otto Deering, Arthur Derringer, Jimmy Green,

Charles Hembree, Forest Hester, Charles McAdams, Rodney McLean, Denzil Neville, Henry Reuter, Danny Ritzert, Robert Squillan, George Thomas and Robert Wright. (Tr. 3291; 3295; 3299; 4321; 4413; 4591-4596; 5347-5361; 5402-5446; 5560; 5796; 6160-6221; SE 397-398b; 553a-554; 569-569a; 609-609c; 616-616a; 749-749a; 774-774a; 783-785; 834a-834b; 920-920a; 979-980)

Copies of jail records reflecting reports by the Sheriff or jail deputies as to conditions in the jail, the dates various prisoners were in the jail, where they had been housed in the jail at various times, how they had conducted themselves, how and by whom they had been disciplined and why, who had visited them, telephone conversations with third persons about such prisoners, that some of such prisoners had been represented by William C. Erbecker, and other details too numerous to mention concerning such prisoners and their relationships with jail personnel. (Tr. 4225-4227; 4589-4590; 4593-4601; 4674-4678; 6341-6342; 7288-7289; 7291-7292; 7295-7296; 7298-7299; 7301-7303; SE 540b-540e; 609b-609c; 616-616a; 625c-625d; 1012a-1012b; 1181-1182c)

Testimony of deputy sheriffs and copies of jail records reflecting reports by deputy sheriffs who had arrested various jail prisoners, what had led to such arrests, their conversations with such prisoners, the conduct of the prisoners after being arrested, and other details too numerous to mention. (Tr. 4559-4563; 4568-4571; 4669-4678; SE 605-605e; 608; 624-625d)

Copies of jail records reflecting reports of deputy sheriffs who had conducted investigations of various criminal charges pending against various jail prisoners, including statements which had allegedly been taken from such prisoners and statements allegedly taken from other persons containing accusations of crime against such prisoners. (Tr. 3294-3299; SE 398b-398d)

Copies of correspondence and records of telephone calls between deputy sheriffs and former jail prisoners. (Tr. 3231-3234; 3241-3243; 3246-3249; 3258-3263; 3278-3283; SE 385-386; 388, 388c; 388f-388g; 396; 397)

Copies of hospital records reflecting reports by doctors and other hospital personnel as to when various jail prisoners had been in the hospital, their injuries, ailments and symptoms, their statements with respect thereto, the treatment they had received therefor, and the testimony of a doctor (not the author of such reports) who read, deciphered and explained such medical records where they were not legible, understandable or consisted of scientific terms, and gave his opinions with respect thereto. (Tr. 4877-4878, 5366-5367; 6764-6765; 6777-6779; SE 651-651a; 756; 1100-1101; 1101a-1101b)

Testimony from jail deputies as to their conversations with each other in the jail, as to their conversations with third persons about each other as to their conversations with jail prisoners, as to their conversations with third persons about jail prisoners, as to "difficulties" they had experienced with such prisoners, as to how they had "handled" such difficulties, as to the personal habits, peculiarities, nicknames and physical impairments of such prisoners, as to jail conditions, and that they had never seen a prisoner struck by a deputy except when it was necessary to "restrain" such prisoner. (Tr. 3842-3844; 4156-4157; 4182-4183; 4187-4195; 4200-4201; 4210-4214; 4219-4223; 4315-4317; 4332-4346; 4541-4544; 4568-4576; 4669-4673; 4683-4693; 4770-4771; 4778-4784; 6267-6269; 6271-6277; 6280-6286; 6295-6303; 6333-6334; 7522-7525; SE 463-463a; 510d-510e; 514; 515-516d; 523-523a; 533-533b; 539-540a; 552-552a; 556-559; 602-603; 608; 609-609b; 624-625b; 627-628; 639-640; 641-641d; 996-998i; 999; 1001-1003; 1011-1012; 1221-1223)

Copies of Coroner's records reflecting autopsy reports, verdicts, jail records, reports by deputies, etc., pertaining to deaths of jail prisoners. (Tr. 6905-6918; 6783-6787; SE 1112a-1113; 1103-1103a)

Testimony of third persons as to their conversations and experiences with deputy sheriffs, with jail prisoners at times when such prisoners were not in the jail, and even with other third persons. (Tr. 3018-3034; 3036-3057; 3073-3079; 3085-3090; 3270-3274; 3955-3956; 6153-6156; SE 351-357h; 390-391a; 475-475a; 977-979a)

Defendant objected to all such evidence on the following ground:

> "Mr. Scanlon: On that Your Honor has decided, apparently decided, at least evidenciary, against us because Your Honor has been allowing evidence to go in, not only on what was known, not only what we were aware of, but what we might have been aware of had we exercised some degree of care, or a degree of high care or slight care or some measure of diligence in learning something else other than what we admittedly knew. Now that is a fundamental law question which has also been raised, and I think decided, because it is our position that it is error for this Court to permit evidence to go into this record of facts that we might have learned, that the defendants might have found out, at the time they published these articles, which might have indicated falsity. Now incident to that, is the distinction which Mr. Jacobs raises, that well, while some evidence might not be admissible on the issue of knowledge of falsity, he also has the burden of proving falsity itself and it is therefore admissible on that ground. It is the defendants' position, first that if any such evidence is offered on that issue of falsity, it must be competent evidence, and hearsay evidence has been introduced on that issue, so that . . .
>
> "Judge: That is your contention that it was hearsay and you object to it on that theory?

"Mr. Scanlon: Yes, I don't know why it would be other than hearsay because, for instance, conversations between Deputy Sheriffs and other people not in the presence of the defendants, it seems to me would be hearsay.

"Judge: Well there would be very little evidence in this case, Mr. Scanlon, if all of this testimony had to be in the presence of the defendants.

"Mr. Scanlon: That's true.

"Judge: Yes, sir.

"Mr. Scanlon: I certainly agree with that. Unfortunately . . .

"Judge: It would take about two days to try it.

"Mr. Scanlon: Unfortunately Your Honor, I think that this rule of law that we have here, thus puts the plaintiff in a different position than the defendants. I'm first to admit to that.

"Judge: I still say you're aware of it.

"Mr. Scanlon: Beg pardon?

"Judge: I say you're aware of these conversations, so forth and so on.

"Mr. Scanlon: You still say that we are aware of them?

"Judge: Maybe not of the exact pieces of conversation, but of the theory of it and that the fact you are printing concerning that particular thing in your newspaper to me would indicate that you were aware of it.

"Mr. Scanlon: You mean that if we write an article then, based upon what a inmate or former inmate has told, or stated in a sworn statement, then it is Your Honor's instruction that evidence as to what that inmate told other people or what that inmate did, at the time that he is describing, is something that we we are aware of? If I understnd Your Honor?

"Judge: Go ahead . . . That's perfectly all right. If I make a mistake, I just make a mistake. That's what we've got the Supreme and Appellate Courts for." (Tr. 5011-5032; SE 678a-678j)

F.

DEFENDANT'S MOTION FOR DIRECTED VERDICTS AT THE CLOSE OF ALL THE EVIDENCE.

At the close of all the evidence, defendants filed their motion for directed verdicts, which motion, omitting caption and signatures, is as follows:

> "Come now the defendants, Eugene C. Pulliam, Eugene S. Pulliam, and Indianapolis Newspapers, Inc., an Indiana Corporation, at the close of all the evidence, reserving the right to proceed with the trial in the event this Motion is overruled, and separately and severally move the Court to direct the jury to return a verdict for the defendants, and each of them, and against the plaintiff on each of pleading paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of plaintiff's complaint." (Tr. 703-704; 709; SR 100)

Such motion was overruled as to defendant Indianapolis Newspapers, Inc. (Petitioner) and sustained as to defendants Eugene C. Pulliam and Eugene S. Pulliam. (704; SE 100).

G.

PLAINTIFF'S FINAL ARGUMENT TO THE JURY WITH RESPECT TO THE PRIOR ILL WILL EVIDENCE AND OBJECTION THERETO.

The record below discloses that plaintiff, in his final argument to the jury, was permitted to make the following argument with respect to the prior ill will evidence, and that defendant's objection thereto and motion that it be stricken was overruled:

> "Mr. Brown: Remember the testimony about the conversations? 'I'm going to keep you on the front page as long as it take to shape you up.' Remember what happened to his predecessor?
>
> "What did happen to his predecessor? The uncontradicted evidence in this case shows that he died of ulcers. Now is there any corroboration for that statement, other than Mr. Fields? It wasn't denied by Mr. Johnson.
>
> "Remember Judge Pearcy's testimony, when he said, 'I'll get the son-of-a-bitch. He had better remember his predecessor.' Is that the kind of reporting that we're going to condone in this case?
>
> "The other conversation, as I remember it, was when they were in Major Funk's office. Mr. Johnson said, in response to questions asked of him, 'No comment. No comment. You're pretty damned cocky.'
>
> "Now what did Virginia Wilkes say? He says he can't remember but can't imagine himself saying such things, but as he stood before her desk, he said, 'I'll get the son-of-a-bitch, if it takes a year.' Do you know when that was? That was in December of 1964, and after all of this, on December 28th of 1965, don't you think he got him? Just like he told Virginia Wilkes he was going to do, one year prior. *Don't talk to me about malice in this case!*

"The significance of this evidence is this:

"Would a defendant, and I am talking about Indianapolis Newspapers, Inc., because they are chargeable with the action of Rick Johnson, would the Indianapolis Newspapers, Inc., be more likely, *with that attitude, to publish falsehoods against Sheriff Fields, than otherwise?*—I think the question answers itself.

"Now I would like to read to you what the Court will read.

"Mr. Scanlon: Pardon me. Mr. Brown, I hate to interrupt you, but, Your Honor, may I register an objection to the reference to ill will, or malice, made by Mr. Brown, and move it be stricken, and may I have a continuing objection, in case you overrule the objection and the motion.

"Court: The motion is overruled, and you have a continuing objection.

"(Mr. Brown continues:)

"Now this is what the Court will tell you the law is:

"'Evidence tending to establish that the defendant harbored ill will toward plaintiff prior to the publications in question may be considered *only* upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not.'—This is another instruction which will be read to you by the Court." (Emphasis added) (Tr. 7643-7645; SR 147-149)

II.

THE TRIAL COURT'S INSTRUCTIONS TO THE JURY AND OBJECTIONS THERETO.

Set forth below are the trial court's instructions to the jury in this cause and defendant's objections thereto:

Court's Instruction No. 1:

> "This is an action for defamation brought by the plaintiff, Robert H. Fields, against the defendants Eugene C. Pulliam, Eugene S. Pulliam, and Indianapolis Newspapers, Inc., an Indiana Corporation. The complaint is in forty-four paragraphs." (Tr. 7602; SR 102)

Court's Instruction No. 2:

> "This is an action for libel. I will presently outline for you the issues in this case.
>
> The parties, by their pleadings have ageed that plaintiff is, by profession, an attorney-at-law and was, at all times mentioned in his complaint Sheriff of Marion County.
>
> The parties further agree that defendants Eugene C. Pulliam, Eugene S. Pulliam and Indianapolis Newspapers, Inc., are publishers of a newspaper, "The Indianapolis Star" which had, at the times mentioned in the complaint, a circulation of 225,594 each week day and 360,742 on Sunday.
>
> "Plaintiffs complaint is in 44 paragraphs and each paragraph must be separtely considered and will require a separate verdict.
>
> Each of the 44 paragraphs is based upon published matter, which the parties further agree was published on 44 separate days, in "The Indianapolis Star", and is accurately set forth in Exhibits 1 through 44 to plaintiff's complaint.

In general each paragraph of the complaint alleges that the published matter accused plaintiff of the commission of two or more of the following crimes.

1. Accessory after the fact of murder in connection with two separate incidents.

2. Malicious prosecution of one man for murder and another for accepting a bribe.

3. Intimidation of witnesses in connection with two separate incidents.

4. Aggravated assault and battery in connection with four separate incidents.

5. Assault and battery with intent to kill in connection with four separate incidents. Defendants have filed their answer to each of these 44 paragraphs of complaint denying that the published matter did accuse plaintiff of any of the crimes specified and further alleging that if they did they did so without knowledge of its falsity and not in reckless disregard of whether it was false or not. (Tr. 7602-7604; SR 102-103)

Court's Instruction No. 3:

"These are a resume of the pleadings forming the issues to be tried by you in this cause of action." (Tr. 7604; SR 103)

Court's Instruction No. 4:

"You will have the complaint and the answers directed to each paragraph thereof in the Jury Room to read for yourselves. But you are instructed that they are not to be considered by you as any evidence in this cause." (Tr. 7604; SR 104)

Court's Instruction No. 5:

"Upon the issues joined upon the complaint the burden of proving that defendants defamed plaintiff as alleged rests upon the plaintiff." (Tr. 7604; SR 104)

Court's Instruction No. 7:

"By a preponderance of the evidence is meant the greater weight of the same, and this does not necessarily depend upon the greater number of witnesses who may have testified upon a given proposition, but it does depend upon the greater weight to be given to all the evidence in the cause, as it may apply to any proposition you are considering.

If, therefore, one side or the other in this cause has had more witnesses than the other upon a given proposition or issue, this of itself, standing alone, is not necessarily the ground for deciding such proposition or issue in favor of the party presenting the greater number of witnesses as to such matter." (Tr. 7605; SR 104)

Court's Instruction No. 8:

"It is the province and duty of the Jury to find the facts from the evidence, and it is the province and duty of the Court to instruct you as to the law of the case on the facts found by you, and it is your duty to be governed by the law as the Court instructs it to be.

"The Court has not attempted to embody all the law of the case in any one instruction. Therefore, in construing any single instruction, you must construe it in connection with all other instructions given to you, and construe them in harmony with each other." (Tr. 7605-7606; SR 104-105)

Court's Instruction No. 9:

"You must determine this case upon the evidence given in this trial, and upon no other considerations whatever. You should not consider questions which have been asked and not answered, nor testimony which may have been given and then stricken out by the Court. Statements which may have been made by

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* Court's Instruction No. 6 was the instruction directing a verdict for defendants Eugene C. Pulliam and Eugene S. Pulliam at the close of all the evidence. See, *supra*, ...

counsel which are not supported by evidence must not be considered as any evidence in favor of his client." (Tr. 7606; SR 105)

Court's Instruction No. 10:

"The Court instructs the Jury that while it is necessary for the Plaintiff to offer some evidence tending to prove each material averment of his complaint, it is not necessary that such evidence shall be direct, but any fact necessary to constitute Plaintiff's cause of action may be proved by circumstantial evidence as well as direct testimony, if the Jury finds that such fact is fairly to be inferred from all the circumstances in evidence together with all the other evidence introduced tending to prove or disprove such averment." (Tr. 7606; SR 105)

Court's Instruction No. 11:

"As jurors you are not expected to lay aside matters of common knowledge or your own observations and experience in the affairs of life, but you may give effect to such inferences as common knowledge or your personal observation and experience may reasonably draw from the facts directly proved." (Tr. 7606; SR 106)

Court's Instruction No. 12:

"The party having the burden of proof upon any issue must prove the truth of such issue by a fair preponderance of all the evidence thereon. If the evidence is evenly balanced upon any issue, then you should find as to such issue against the party having the burden as to such issue, for there could be no preponderance where the evidence was evenly balanced." (Tr. 7607; SR 106)

Court's Instruction No. 13:

"In the trial of this cause, the Court does not intend to indicate to you, by any of his rulings or comments or otherwise, any opinion as to the facts in the case,

or that he has any opinion as to what facts are proven or not proven by the evidence. The facts must be determined by the Jury from the evidence, and when so determined, it is the duty of the Jury to apply the law as given by the Court and return a verdict in accordance with the law and facts as ascertained." (Tr. 7607; SR 106)

Court's Instruction No. 14:

"You are the exclusive judges of the weight of the evidence, and the credibility of the witnesses. It is your duty to consider all the evidence and determine what facts have been proven, or not proven. If you meet with conflicts in the evidence, you should, if you can reasonably and fairly do so, so reconcile them as to believe all the testimony of all the witnesses. If you cannot so reconcile the evidence, then you have the right to believe that which you think most worthy of credit, and disregard that which cannot be reasonably and fairly reconciled therewith." (Tr. 7608; SR 106-107)

Court's Instruction No. 15:

"You are instructed that the Court, by directing you to return a verdict for the defendants, Eugene C. Pulliam and Eugene S. Pulliam, does not mean to imply that the plaintiff, Robert H. Fields, has either proved or not proved any of the charges made in his complaint against the remaining defendant, Indianapolis Newspapers, Inc., but it is for you, the jury, to determine whether or not plaintiff has done so by the greater weight of the evidence." (Tr. 7608; SR 107)

Court's Instruction No. 16:

"In determining the credibility of any witness and weighing his or her testimony, it is proper for you to consider his or her appearance, conduct, and manner of testifying, while on the witness stand; whether his or her statements are reasonable or unreasonable,

consistent or inconsistent, and whether they are corroborated or contradicted by other evidence, which you deem worthy of credit; the extent of his or her intelligence, his or her knowledge and means of knowing of the matters stated; the attention he or she gave to such matters, and his or her recollection thereof, whether good or bad; his or her interest in the result of this cause, if any, and the nature and extent of it; whether or not he or she has any feeling, bias or prejudice for or against the plaintiff or the defendants. And any other fact or circumstance, shown by the evidence, which from your experience and observation, you believe will aid you in arriving at the truth in this cause, may be considered, and given such weight as you think it is justly entitled to." (Tr. 7609; SR 107-108)

Court's Instruction No. 17 (Defendant's Tendered Instruction No. 1):

"It is the law, and I so instruct you, that every citizen, including a newspaper publisher, has a qualified privilege, conferred by the Constitution, to discuss and criticize the official conduct of public officials. This is a fundamental right of citizenship in a democracy, which is possessed by all citizens alike and which may be exercised with respect to any public official, including a county sheriff or any deputy sheriff.

The citizen's privilege to discuss and criticize the official conduct of public officials is not limited merely to statements which are true. Such privilege also includes the right to make false and defamatory statements about the official conduct of public officials, so long as the citizen, at the time he makes such statements, does not make them with actual malice, that is, with knowledge that they are false or with reckless disregard of whether they are false or not.

You are instructed that each and every one of the newspaper articles and editorials attached to the complaint in this action, in so far as they pertain to plaintiff at all, do so only with respect to his official conduct

as sheriff of Marion County and thus as a matter of law are qualifiedly privileged publications under the Constitution. Therefore, before plaintiff can recover damages in this action for any of such articles and editorials, on the ground that they impliedly accused him with having committed one or more of the alleged crimes, he must first prove as to such article or editorial each of the following:

"1. That it accused him personally with having committed one or more of the alleged crimes;

2. That said accusation as well as the statement or statements giving rise thereto were false; and

3. That said accusation as well as the statement or statements giving rise thereto were published by defendants with actual malice, that is, with knowledge that they were false or with reckless disregard of whether they were false or not.

If, with respect to any article or editorial attached to plaintiff's complaint, you find from all the evidence that plaintiff has failed to prove any one of these elements, then I instruct you that plaintiff cannot in this action recover damages as to that article or editorial." (Tr. 7609-7611; SR 108-109)

Court's Instruction No. 18 (Plaintiff's Tendered Instruction No. 1):

"The law of libel insofar as it is applicable to this cause may be defined as a malicious publication charging another with an offense punishable by indictment.

Malicious publication insofar as same is applicable to this cause is a publication of falsehood made with knowledge that it was false or with reckless disregard of whether it was false or not.

If you find it to be a fact, that the articles sued upon, or any of them, contained criticisms or false statements against the Marion County Sheriff's Department such would not preclude the plaintiff from recovering if the facts otherwise warrants his recovery

under the law as stated in these instructions." (Tr. 7611; SR 109)

Defendant's Objections to Court's Instruction No. 18 (Plaintiff's Tendered Instruction No. 1):

"The defendant objects to Instruction No. 1 tendered by the plaintiff, on the ground that the first and second paragraphs thereof, each respectively, invades the province of the Jury by implying that (1) libel is in this case, and (2) that malicious publication is in this case, and I object to the third paragraph of said instruction for the reason that the paragraph is ambiguous and invades the province of the Jury in that the current summation of the complaint is overloaded with [claims of] accusations against the plaintiff personally in the publications." (Tr. 7629; SR 122)

Court's Instruction No. 19 (Defendant's Tendered Instruction No. 2):

"Having elected to allege in his complaint that the publications complained of accused him either directly or by implication of certain specified crimes, and of those crimes only, plaintiff is bound by that election and cannot claim that said publications accused him of some other crime or crimes not alleged in his complaint, or that said publications libeled him in some other respect not alleged in his complaint. You are not to speculate as to whether any of the publications may have libeled the plaintiff in some other or different respect." (Tr. 7612; SH 110)

Court's Instruction No. 20 (Plaintiff's Tendered Instruction No. 2):

"Only those false statements made with the high degree of awareness of their probable falsity may be the subject of civil libel. Even though publications are used as a tool for political ends, does not automatically bring it under the protective mantle of the constitution. The use of the known lie as a tool is at once at odds with the premises of democratic gov-

ernment and with the orderly manner in which economic, social, or political change is to be affected. Known falsehoods fall into that class of utterances which are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Hence the knowingly false statement made with reckless disregard of the truth does not enjoy constitutional protection." (Tr. 7612-7613; SR 110)

Defendant's Objections to Court's Instruction No. 20 (Plaintiff's Tendered Instruction No. 2):

"The defendant objects to Instruction No. 2 tendered by the plaintiff, to the second sentence of such instruction, which reads, 'Even though publications are used as a tool for political ends, does not automatically bring it under the protective mantle of the constitution,' in that it invades the province of the Jury, is argumentative, does not leave to the Jury to decide whether there are any such publications as shown by the evidence in this case.

The defendant objects to the third sentence, which reads, 'The use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected,' in that it invades the province of the Jury, implying to the Jury that there is the use of the known lie as a tool. This sentence, as well as the prior sentence objected to, are abstract statements which are not applicable to this case, or at least it is not left to the fact finders to determine whether or not these principles are applicable.

The defendant objects to the third sentence of the instruction, which reads, 'Known falsehoods fall into that class of utterances which are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality,' for the reason, (1) it is

the defendant's position that the publications made the basis of the complaint refer to the Sheriff's Department, and as they refer to the Sheriff's Department, the issue which is to be determined by the triers of the fact then, even if they did contain false statements, or, as the instruction calls it, 'known falsehoods', there could be no liability; whereas this sentence implies to the contrary.

(2) This sentence invades the province of the Jury by implying that known falsehoods are in this case or has been established by the evidence, rather than leaving that matter to the fact finders; and

Thirdly, this sentence is not the law.

The defendant objects to the last sentence of Instruction No. 2, which reads, 'Hence the knowingly false statement made with reckless disregard of the truth does not enjoy constitutional protection,' for the same reasons as cited to the sentence last discussed of such instruction.

Generally, the defendant objects to the entire instruction for the reasons stated above specifically as to the sentence thereof and also because it is an entire argument and attempt to state abstract principles of law which have no application in this case and invades the province of the jury." (Tr. 7629-7631; SR 122-124)

Court's Instruction No. 21 (Defendant's Tendered Instruction No. 3):

"To sustain his burden of proving that any article or editorial attached to his complaint accused him personally with having committed one or more of the alleged crimes, plaintiff must prove that and not merely that such an accusation was made against the sheriff's department or against someone with whom the plaintiff was associated or for whose conduct he was responsible as the head of his department.

Every citizen, including the publisher of a newspaper has an absolute right to make any accusation he chooses against the government, as such, or against any department of government, as such, including a sheriff's department." (Tr. 7613; SR 111)

Court's Instruction No. 22 (Plaintiff's Tendered Instruction No. 3):

"You are instructed that the defendant Indianapolis Newspapers, Inc., is a corporation and that a corporation can act only through its publishers, officers, agents and employees. Therefore the defendant Indianapolis Newspapers, Inc. would be responsible for the acts of its publishers, officers, agents and employees when such acts were committed while such publishers, officers, agents or employees were acting within the scope of their employment.

You are further instructed that knowledge learned or gained by a publisher, officer, agent or employee of said defendant while acting in the scope of their employment, is the knowledge of the defendant, Indianapolis Newspapers, Inc." (Tr. 7614; SR 111)

Court's Instruction No. 23 (Defendant's Tendered Instruction No. 4):

"In determining whether plaintiff has sustained his burden of proving that he was personally accused with having committed one or more of the alleged crimes, I instruct you that the articles and editorials referred to in each paragraph of complaint must be read fairly and as a whole. Sentences or phrases or headlines must not be taken out of context but may be considered in judging the article. The language used must be given the meaning which it would be given by the ordinary reader, not necessarily the meaning given it by the plaintiff, or by the defendants, or by any particular witness or witnesses. The publications are not to be read from the standpoint of a mind trained in technicalities, but from the standpoint of their effect upon the mind of the average reader." (Tr. 7614-7615; SR 112)

Court's Instruction No. 24 (Plaintiff's Tendered Instruction No. 4):

"Reckless disregard of truth describes the state of mind of one who publishes an untruth with such knowl-

edge of existing facts and circumstances refuting such untruth, as to evince an abandonment of any care for the rights of others and a heedless indifference to the wrongful injury which is likely to result from such publication." (Tr. 7615; SR 112)

Defendant's Objections to Court's Instruction No. 24 (Plaintiff's Tendered Instruction No. 4):

"The defendant objects to Instruction No. 4 tendered by the plaintiff for the reason that it invades the province of the Jury and because it states that the question of 'reckless disregard of truth' is a standard to be determined by 'care' or a failure to use care, implying that the reckless failure to secure information which may have been available to the defendant at the time of the publications would constitute reckless disregard, or the publishing of the statement without exercising care to learn facts or information which may have been available to the defendant in the exercise of care, it being the defendant's position that under the law, reckless disregard of the truth is defined as an 'awareness of a high degree of probable falsity,' and therefore is a matter of knowledge at the time of the publication, it being the defendant's position that the plaintiff has the burden of proving either actual knowledge of the falsity, or knowledge of such facts that indicate such a high degree of probable falsity, that to publish the statement would constitute reckless disregard of the truth, and the standard cannot be what the defendants might have learned had they exercised care." (Tr. 7631-7632; SR 124)

Court's Instruction No. 25 (Defendant's Tendered Instruction No. 5):

"To sustain his burden of proving falsity, plaintiff must not only prove the falsity of any implied accusation of crime made against him, but he must also prove the falsity of the statement or statements in the publication which gave rise to said implied accusation." (Tr. 7615; SR 112)

Court's Instruction No. 26 (Plaintiff's Tendered Instruction No. 5):

"In resolving the issue of reckless disregard of the truth, as same is applicable to this cause, you may give due consideration to the facts you find the defendant knew at the time of any such publication together with all other circumstances such as the reliability or lack of reliability of its informants the sources of additional information available to defendant and known, by it, to be available." (Tr. 7616; SR 113)

Defendant's Objections to Court's Instruction No. 26 (Plaintiff's Tendered Instruction No. 5):

"The defendant objects to Instruction No. 5 tendered by the plaintiff, in that it implies in its opening that the issue of reckless disregard of the truth should be faced by the Jury and therefore invades the province of the Jury. The case may be disposed of by the Jury on the ground urged by defendant, that the articles in question refer solely to the Sheriff's Department, and the Jury may not have reached the issue of reckless disregard of the truth.

"The defendant further objects to Instruction No. 5 for the reason that it states an erroneous theory of law in that it states that in determining the issue of reckless disregard, the Jury may consider the facts that it finds the defendant knew at the time of any such publication, 'together with all other circumstances such as the reliability or lack of reliability of its informants, the sources of additional information available to defendant and known by it to be available,' for all the reasons stated in objections to Instruction No. 4; that the test is not what the defendants may have learned in the exercise of care, or as this instruction states it, 'what additional information may have been available to the defendant;' the sole test which the Jury may apply is the defendant's knowledge of the awareness, which terms the defendant believes to be synonymous and therefore must be what the proof has

established, that the defendants knew either as to the falsity or a high degree of falsity.

The instruction, therefore, speaks of an erroneous theory of law, which theory of law the Court has applied in ruling on the evidence throughout the case, in allowing evidence to be admitted over the objection of the defendants, which evidence was offered to show what information may have been available to defendants, had the defendants made investigation of various cases." (Tr. 7632-7633; SR 124-125)

Court's Instruction No. 27 (Defendant's Tendered Instruction No. 6):

"To sustain his burden of proving actual malice, plaintiff must prove that defendants published both the implied accusation and the statement or statements giving rise thereto either with knowledge that they were false or with reckless disregard of whether they were false or not.

Knowledge of falsity means actual knowledge at the time of publication that a statement was in fact false.

Reckless disregard as to truth or falsity means a high degree of awareness at the time that a statement is probably false." (Tr. 7616; SR 113)

Court's Instruction No. 28 (Plaintiff's Tendered Instruction No. 6):

"Plaintiff has the burden of proving,

First that the publications accused plaintiff of the crimes he alleges, to-wit:

1. Accessory after the fact of murder in connection with two separate incidents.
2. Malicious prosecution of one man for murder and another for accepting a bribe.
3. Intimidation of witnesses in connection with two separate incidents.
4. Aggravated assault and battery in connection with four separate incidents.
5. Assault and battery with intent to kill in connection with four separate incidents.

In resolving this issue it is not necessary that plaintiff be so charged by the article in question is that precise language required in a criminal indictment or affidavit. Each article must be judged when read as a whole by the ordinary reader, taking into account the headlines, emphasis and any light cast upon it by preceding publications if shown by the evidence.

Second: That the accusations were false.

Third: That defendant knew said accusations were false or published them with a reckless disregard of truth.

In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendant's knowledge of falsity or reckless disregard of truth." (Tr. 7617-7618; SR 113-114)

Defendant's Objections to Court's Instruction No. 28 (Plaintiff's Tendered Instruction No. 6):

"The defendant objects to Instruction No. 6 tendered by the plaintiff, and specifically to the paragraph after the listing of the five enumerated crimes, for the reason that the Court in this instruction, and in any other instruction, tells the Jury what it is necessary to find; whereas in this instruction the Court tells the Jury what it is not necessary to find, in order to find that the plaintiff has been charged by the defendants with one of the criminal acts enumerated;

For the additional reason that there is no evidence that any reader read all of such articles, except evidence entered over objection, or on rebuttal.

The defendants further object to Instruction No. 6 for the reason that the instruction fails to tell the Jury that in this case, where the plaintiff has not based its complaint or defamation on statements contained in the publication, but has elected to base his claim on the ground of certain meanings or innuendos charging him with crime, the burden, the defendants assert, is on

the plaintiff to prove that (1) the accusations of crime are implied by statements contained in the publications; that those statements themselves were published with knowledge of falsity or with reckless disregard of the truth or falsity, and that the accusations themselves were false and were known to be false, or probably false, at the time of the publication in question.

Defendants further object to the Instruction No. 6 in that the plaintiff also has the burden of proving that the publications allegedly accusing plaintiff of the crime or crimes listed, contained the elements of each particular crime, all of which is not stated in the instruction." (Tr. 7633-7635; SR 125-126)

Court's Instruction No. 29 (Defendant's Tendered Instruction No. 8):

"In determining whether plaintiff has sustained his burden of proving that defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or probably false, I instruct you that the fact, if you find it to be a fact, that defendants published accusations or statements made by persons with criminal records or by persons of ill repute, would not in itself be sufficient to establish knowledge of falsity or probable falsity on the part of defendants." (Tr. 7618; SR 114-115)

Court's Instruction No. 30 (Plaintiff's Tendered Instruction No. 8):

"Evidence tending to establish that the defendant harbored ill will toward plaintiff prior to the publications in question may be considered only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not." (Tr. 7618; SR 115)

Defendant's Objections to Court's Instruction No. 30 (Plaintiff's Tendered Instruction No. 8):

"The defendant objects to Instruction No. 8 tendered by the plaintiff, for the reason that (1) it is the defendant's position and has been throughout the trial that evidence of ill will is not to be considered by the Jury for any purpose, and the Court has permitted such evidence of ill will to be admitted without restricting its application, and the plaintiff's evidence having consummated almost eight weeks, it would be impossible now for the Court to give any instruction limiting the application of such evidence of ill will to the issue of reckless disregard.

It is the defendant's position that the trial has proceeded on an erroneous theory of law, if evidence of ill will is admissible, it being the defendant's position that in a defamation suit of this character, malice can be proved in only one way, that is, by evidence of knowledge of falsity, or reckless disregard, both of which depend on evidence of knowledge." (Tr. 7635-7636; SR 127.)

Court's Instruction No. 31 (Defendant's Tendered Instruction No. 10):

"There have been a number of other newspaper articles admitted into evidence in this case, some published before and some published after those articles attached to the complaint. Those other articles are not the basis of this action. Plaintiff has not claimed that he was libeled by any of them and you may not award plaintiff any damages as a result of their publication." (Tr. 7619; SR 115)

Court's Instruction No. 32 (Plaintiff's Tendered Instruction No. 7):

"There was, at all times mentioned in the complaint, in full force and effect a statute of the State of Indiana which reads as follows:

"If any person shall maliciously and without probable cause attempt to cause an indictment to be found, or other prosecution to be commenced against any person for any crime or misdemeanor; or if two (2) or more persons shall conspire together for such purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons so offending, shall, on conviction, be fined not more than one thousand dollars ($1,000), to which may be added imprisonment in the county jail not less than ten (10) days nor more than six (6) months."

The above statute defines an offense punishable by indictment.

There was, at all times mentioned in the complaint, in full force and effect a statute of the State of Indiana which reads as follows:

"Whoever, corruptly, or by force or threats, or threatening letters, endeavors to influence, intimidate or impede any juror, witness or officer in any court of this state, in the discharge of his duty, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall, on conviction be fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500), to which may be added imprisonment in the county jail not less than ten (10) days nor more than sixty (60) days."

The above statute defines an offense punishable by indictment.

There was, at all times mentioned in the complaint, in full force and effect a statute of the State of Indiana which reads as follows:

"Whoever with intent to kill another human being perpetrates an assault or assault and battery upon the other human being, shall upon conviction, be imprisoned in the state prison for not less than two (2) nor more than fourteen (14) years."

The above statute defines an offense punishable by indictment.

There was, at all times mentioned in the complaint, in full force and effect a statute of the State of Indiana which reads as follows:

> "Whoever intentionally or knowingly and unlawfully inflicts great bodily harm or disfigurement upon another person is guilty of aggravated assault and battery and upon conviction shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, to which may be added a fine in any amount not to exceed one thousand dollars ($1,000)."

The above statute defines an offense punishable by indictment.

There was, at all times mentioned in the complaint, in full force and effect a statute of the State of Indiana which reads as follows:

> "Every person not standing in the relation of husband or wife, parent or child, to any person guilty of any felony, who shall, after the commission of such crime, harbor, conceal or assist such offender, with intent that he shall escape from detection, capture, arrest or punishment, shall be deemed an accessory after the fact, and may be charged, indicted, tried, convicted and punished, though the principal be neither charged, indicted, tried nor convicted; and, on such conviction, he shall suffer the same punishment and penalties as are prescribed by law for the punishment of the principal. But in such charge the offense committed by the principal offender shall be stated, and it shall therein be charged that the accessory did so harbor, conceal or assist such offender, with intent that he should escape detection, arrest, capture, or punishment."

The above statute defines an offense punishable by indictment.

In determining whether or not the publications in

question accused plaintiff of the commission of the offenses plaintiff alleges they did, the words used in said publications are to be understood in their plain and natural sense, according to the meaning they convey." (Tr. 7619-7621; SR 115-117)

Defendant's Objections to Court's Instruction No. 32 (Plaintiff's Tendered Instruction No. 7):

"The defendant objects to plaintiff's tendered Instruction No. 7 for the reason that the statute cited in said instruction pertaining to assault and battery with intent to kill, and the statute cited therein pertaining to aggravated assault, do not specify an offense based upon acquiescence in the conduct of another, which is the basis of the alleged accusations in plaintiff's complaint, and the only one." (Tr. 7635; SR 126)

Court's Instruction No. 33 (Plaintiff's Tendered Instruction No. 9):

"If you find from the evidence that the plaintiff is entitled to recover on any or all paragraphs of complaint, it will then be your duty to assess the amount of damages which, in your judgment, he should recover on each such paragraph of complaint. In assessing such damages you may take into consideration the mental suffering, if any, produced by the publication of the alleged accusations, and the injury, if any, to the plaintiff's character and reputation, which the evidence shows he has sustained as a proximate result of the publication of the alleged accusations. And you should assess his damages at such a sum as, in your judgment, will compensate him for the injuries, if any, as the proximate result of such alleged accusations, if any, as shown by the evidence." (Tr. 7621-7622; SR 118)

Defendant's Objections to Court's Instruction No. 33 (Plaintiff's Tendered Instruction No. 9):

"The defendant objects to Instruction No. 9 tendered by the plaintiff, on damages, (1) because it permits the Jury to consider mental sufferings, an element of damage not alleged, there being no evidence to indicate any mental suffering and there being no evidence to indicate that the plaintiff has sustained any damage, any mental suffering, any damage to his reputation, as a proximate result of the publication of the articles sued upon.

The defendant further objects to the giving of plaintiff's tendered instruction No. 9 for the reason that the evidence as to damages in the lawsuit most favorable to the plaintiff is that there has been a change in plaintiff's reputation since the publication of the articles in question, but there is no evidence showing that the alleged change in reputation is a direct or proximate result of the publications in question, so that there has been a complete failure of proof of any causal connection between the change in reputation and the publication of the articles.

Defendant further objects to Instruction No. 9 tendered by the plaintiff, because it invades the province of the Jury in that it implies that the 'alleged accusations were made, not leaving it to the Jury to make that determination." (Tr. 7636-7637; SR 127-128)

Court's Instruction No. 34 (Defendant's Tendered Instruction No. 11):

"I further instruct you with regard to the measure of the plaintiff's damages, if there is to be a recovery in this case. I do not mean, however, to intimate in any way that there is or is not any right to recover in this case. That is a question solely for you to determine, from the law and the evidence.

Plaintiff's only claim as to damages in each paragraph of his complaint is that his good reputation was

ruined by the publication of the articles and/or editorials attached to that paragraph of complaint.

In determining the amount of damages to be awarded plaintiff, if any, as to each paragraph of complaint, you can only assess damages with respect to the type of injury claimed, to-wit, injury to the plaintiff's reputation in the community which you find to have been proximately caused by the publication of the article or articles attached to that paragraph of complaint.

The plaintiff can demand any amount he chooses. The mere fact that he demands damages does not mean that he is entitled to the amount demanded or for that matter to any amount. The amount of the plaintiff's damages, if any, is for you to determine.

Plaintiff is not entitled to recover any damages in this action on the theory that defendants' publications were responsible for his not being elected to another term of office as sheriff of Marion County.

Neither is plaintiff entitled to recover any special damages on the theory that defendants' publications were responsible for his losing any particular employments, fees or income as a lawyer after leaving the office of sheriff. The plaintiff has made no claim for such damages in his complaint." (Tr. 7622-7623; SR 118-119)

Court's Instruction No. 35:

"If you find from the evidence and the instructions given you by the Court that the plaintiff should recover on any one or more of the paragraphs of complaint in this cause of action, it will be your duty to assess the amount of damages which in your judgment he should recover on such paragraph or paragraphs of complaint, if any. And you are further instructed that the plaintiff is not entitled to recover from the defendant, Indianapolis Newspapers, Inc., An Indiana Corporation, a sum in excess of $51,782.41 on any one paragraph of complaint.

If you should find that the plaintiff should not re-

cover any sum of money in this cause, then you should find for the defendant on each paragraph of complaint." (Tr. 7623; SR 119)

Court's Instruction No. 36:

"When you retire to your jury room to deliberate upon your verdict, appoint one of your members as Foreman. It will be his duty to sign your verdict when agreed upon. When your verdict shall have been signed, return it into open Court." (Tr. 7624; SR 119)

I.

DEFENDANT'S TENDERED INSTRUCTIONS WHICH WERE REFUSED BY THE TRIAL COURT.

The following instructions were tendered by defendant and refused by the trial court:

Defendant's Tendered Instruction No. 7:

> "In determining whether defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not, I instruct you that the fact, if you find it to be a fact, that one or more of defendants' employees may have disliked or harbored ill will toward the plaintiff or may have made threats against him is completely irrelevant and is not to be considered by you in determining whether plaintiff has sustained his burden of proving that defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not." (Tr. 7595; SR 120).

Defendant's Tendered Instruction No. 9:

> "In determining whether defendants published any accusation or statement concerning the plaintiff with reckless disregard of whether it was false or not, I instruct you that defendants had no duty to check the accuracy or truthfulness of any accusation or statement before publishing it, whether it was made by a third person or by defendants. The fact, if you find it to be a fact, that defendants may have failed to make some investigation or check some record which plaintiff feels should have been made or checked before publishing such an accusation or statement is completely irrelevant. The question is not whether defendants were negligent or reckless in failing to

check the accuracy of what they published. The question is—did defendants at the time have actual knowledge that what they were publishing was false or so probably false that such publishing constituted reckless disregard of their own knowledge concerning the truth.'" (Tr. 7596-7597; SR 120-121)

Defendant duly tendered said instructions in writing and moved and requested the court to give such instructions to the jury, after the evidence was concluded and before argument. (Tr. 704; 7590; SR 121a)

J.

CHART SUMMARIZING TRIAL COURT VERDICTS AND JUDGMENTS ON EACH OF 44 COMPLAINT PARAGRAPHS.

(Tr. 3-101; 713-725; SR 1-90; 128-136.)

The following chart reflects, as to each of the 44 Complaint Paragraphs and Exhibits, the date of publication, the meanings alleged with respect thereto, and the verdict of the jury and judgment of the trial court rendered thereon.

Month	Publication Date (1965)	Complaint Paragraph & Exhibit	Alleged Accusations of Crime: 1 Reagan Death	2 Derringer Beating	3 Dearing Beating	4 Neville and "Old Man" Beatings	5 Green and "Old Man" Beatings	6 Haine Prosecution for Bribery	7 Reagan—Crick Deaths	8 Crick Death	Defendant's Verdicts and Judgments	Plaintiff's Verdicts and Judgments
October.	27	One	X								X	
	28	Two	X	X							X	
	29	Three	X	X							X	
	30	Four	X	X							X	
	31	Five		X.	X						X	
November.	1	Six	X	X							X	
	2	Seven	X			X	X				X	
	3	Eight	X					X			X	
	4	Nine	X					X			X	
	5	Ten	X					X			X	
	6	Eleven	X								X	
	7	Twelve	X									X ($10,000)
	8	Thirteen	X								X	
	9	Fourteen	X									X ($10,000)
	10	Fifteen							X		X	
	11	Sixteen						X		X	X	
	12	Seventeen						X		X	X	
	13	Eighteen							X			X ($10,000)
	14	Nineteen							X		X	
	15	Twenty							X			X ($10,000)
	16	Twentyone							X		X	
	17	Twentytwo							X		X	
	18	Twentythree							X		X	
	19	Twentyfour							X		X	
	20	Twentyfive							X		X	
	21	Twentysix							X		X	
	22	Twentyseven							X		X	
	23	Twentyeight						X			X	
	24	Twentynine							X		X	
	25	Thirty							X		X	
	26	Thirtyone						X	X		X	
	27	Thirtytwo							X		X	
	28	Thirtythree							X		X	
	29	Thirtyfour							X		X	
	30	Thirtyfive							X		X	
December.	1	Thirtysix						X			X	
	3	Thirtyseven							X			X ($10,000)
	11	Thirtyeight							X		X	
	15	Thirtynine							X		X	
	18	Forty							X			X ($10,000)
	23	Fortyone							X		X	
	24	Fortytwo							X		X	
	26	Fortythree							X		X	
	28	Fortyfour						X	X		X	

K.

DEFENDANT'S MOTION FOR NEW TRIAL AND MEMORANDUM IN SUPPORT THEREOF.

(Tr. 770-2057; SR 136-151.)

Defendant's motion for new trial and memorandum in support thereof, timely filed (within 30 days after the verdicts were returned and filed), was as follows (omitting caption and signatures):

"MOTION OF DEFENDANT INDIANAPOLIS NEWSPAPERS, INC. FOR NEW TRIAL.

"Defendant Indianapolis Newspapers, Inc., in the above entitled cause, moves the Court for a new trial herein on each of the following grounds:

"1. Irregularity in the proceedings and orders of the Court by which defendant was prevented from having a fair trial in this, to wit:

"a. The Court erred in overruling defendants' motion for a pretrial order ruling inadmissible evidence by plaintiff tending to show that defendant published the articles sued upon out of hatred or hostility toward the plaintiff.

"b. The Court erred in denying to defendant the right to subpoena and to inspect and examine the books and records of the law firm of Lewis and Fields.

"2. The damages assessed are excessive.

"3. Each of the verdicts of the jury on paragraphs 12, 14, 18, 20, 37 and 44 of the complaint is not sustained by sufficient evidence.

"4. Each of the verdicts of the jury on paragraphs 12, 14, 18, 20, 37 and 44 of the complaint is contrary to law.

"5. None of the verdicts of the jury in favor of the plaintiff on paragraphs 12, 14, 18, 20, 37 and 40 of the complaint is a true verdict because each is legally inconsistent with each of the verdicts of the jury in favor of the defendant on paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43 and 44 of the complaint, for the reason that if the plaintiff was not entitled to recover on each of the 38 paragraphs of complaint on which a verdict was rendered for defendant, then the plaintiff was not entitled to recover on paragraphs 12, 14, 18, 20, 37 and 40 of the complaint.

"6. None of the verdicts of the jury in favor of the plaintiff on paragraphs 12, 14, 18, 20, 37 and 40 of the complaint is a true verdict because each is a compromise verdict, each of such verdicts being legally inconsistent with each of the verdicts for the defendant on paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43 and 44 of the amended complaint.

"7. Error of law occurring at the trial as follows:

"7a through 7yy: [Note: The motion for new trial, under this specification of error, specified 160 alleged errors of the trial court in ruling on evidentiary matters, including the alleged erroneous admission, over proper objection, of the prior ill will evidence (summarized, *supra*, at pp. A185-197), and the alleged erroneous admission, over proper objection, of the evidence pertaining to matters about which defendant had no prepublication knowledge (summarized, *supra*, at pp. A198-202). This material, consisting of approximately 1200 transcript pages, is too voluminous to be included herein and may be found at Tr. 770-2057.]

"7zz. The court erred in overruling the objection and motion to strike of the defendant to the

following argument by counsel for the plaintiff in his closing argument to the jury, which argument objection, motion to strike, and the ruling of the court thereon are in the following words:

[In the closing argument of Warren Brown (attorney for the plaintiff)]:

"'Mr. Brown: Remember the testimony about the conversations? 'I'm going to keep you on the front page as long as it takes to shape you up!' Remember what happened to his predecessor?

"What did happen to his predecessor? The uncontradicted evidence in this case shows that he died with ulcers. Now is there any corroboration for that statement, other than Mr. Fields? It wasn't denied by Mr. Johnson.

"Remember Judge Pearcy's testimony when he said, 'I'll get the son of a bitch. He had better remember his predecessor!' Is that the kind of reporting that we're going to condone in this case?

"The other conversation, as I remember it, was when they were in Major Funk's office. Mr. Johnson said, in response to questions asked of him. 'No comment. No comment. You're pretty damned cocky.'

"Now what did Virginia Wilkes say? He says he can't remember but can't imagine himself saying such things, but as he stood before her desk, he said, 'I'll get the son of a bitch, if it takes a year.' Do you know when that was? That was in December of 1964, and after all of this on December 8th of 1965, don't you think he got him? Just like he told Virginia Wilkes he was going to do, one year prior. Don't talk to me about malice in this case!

"This significance of this evidence is this:

"Would a defendant, and I am talking about Indianapolis Newspapers, Inc., because they are chargeable with the action of Rick Johnson, would the Indianapolis Newspapers, Inc., be more likely, with that attitude, to publish falsehoods against

Sheriff Fields, than otherwise?—I think the questions answers itself.

"Now I would like to read to you what the Court will read.

"Mr. Scanlon: Pardon me. Mr. Brown, I hate to interrupt you, but, Your Honor, may I register an objection to the reference to ill will, or malice, made by Mr. Brown, and move it be stricken, and may I have a continuing objection, in case you overrule the objection and the motion.

"Court: The motion is overruled, and you have a continuing objection.

"(Mr. Brown continues:).

"Now this is what the Court will tell you the law is:

"'Evidence tending to establish that the defendant harbored ill will toward plaintiff prior to the publications in question may be considered only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not.'—This is another instruction which will be read to you by the Court."

"7aaa. The Court erred in refusing to give to the jury at the request of the defendant each of the written instructions tendered and requested by the defendant and numbered 7, 9, 12, 13, 14, 15 and 16. This ground and reason is assigned separately and severally as to each of such instructions tendered by the defendant and refused by the Court.

"7bbb. The Court erred in giving to the jury at the request of the plaintiff each of plaintiff's instructions numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9 and to the giving of each of which instruction the defendant duly objected within the proper time by filing written objections to each of said instructions after the Court had indicated the instructions it would give to the jury. This ground and

reason is assigned separately and severally as to each of such instructions tendered by the plaintiff and given by the Court.

"8. The Court erred in overruling defendant's motion, made at the close of plaintiff's evidence, o instrtct the jury to return a verdict for the defendant.

"9. The court erred in overruling defendant's motion, made at the close of all the evidence, to instruct the jury to return a verdict for the defendant.

"10. The Court erred in overruling defendant's motion for summary judgment addressed fo each of the 44 separate paragraphs of plaintiff's amended complaint.

MEMORANDUM.

"Each of the verdicts of the jury on paragraphs 12, 14, 18, 20, 37 and 40 of the amended complaint is not sustained by sufficient evidence in each of the following particulars:

"1. There is insufficient evidence to show that any of the publications on which said paragraphs of complaint are based contained any statement or statements which give rise to any accusation that plaintiff, as Sheriff of Marion County, Indiana, and as distinguished from his deputies or the sheriff's department, had personally committed any of the crimes alleged in said paragraphs of complaint.

"2. There is insufficient evidence to show that any such accusation of crime against plaintiff or any statement or statements giving rise thereto was false.

"3. There is insufficient evidence to show that defendant published any such accusation of crime against plaintiff or the statement or statements giving rise thereto with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

"4. The First and Fourteenth Amendments to the Constitution of the United States, Article I, Section

9 of the Indiana Constitution, and the common law of Indiana preclude a public official from recovering damages for allegedly libelous publications pertaining to his conduct in office unless he first proves each of the following:

"a. That the publication defamed him personally and not just his department or his subordinates for which he was responsible;

"b. That the accusation or (as here) if implied, that the statement or statements giving rise to the accusation were false; and

"c. That the defendant published said accusation and the statement or statements giving rise thereto with actual malice—that is, with knowledge that they were false or with reckless disregard of whether they were false or not.

Each of the verdicts of the jury on paragraphs 12, 14, 18, 20, 37 and 40 of the amended complaint is contrary to law in the following particulars:

"1. Each of said verdicts is not sustained by sufficient evidence.

"2. Each of said verdicts is in violation of the fundamental constitutional principle that prohibits a public official from recovering damages for an alleged libelous publication pertaining to his official conduct in office unless he first proves that said publication contained a defamatory falsehood about his personally, and as distinguished from his subordinates or his department for which he is responsible, and that said defamatory falsehood was published by defendant either with knowledge, at the time, that it was false or with a high degree of awareness, at the time, that it was probably false.

"3. Each of said verdicts permits a public official to recover damages for an alleged libelous publication pertaining to his official conduct in office with proof which at most would establish that defendant was negligent in failing to seek and ascertain more facts before publishing said publication, and is therefore in violation of the fundamental constitutional principle

which permits a public official to recover damages only for those defamatory falsehoods which defendant in fact published with knowledge of their falsity or with knowledge of facts indicating their probable falsity.

"4. Each of said verdicts permits a public official to recover damages for an alleged libelous publication pertaining to his official conduct in office with proof which at most would establish that defendant bore ill will toward him and thus may have had a proclivity to be reckless in publishing statements about him, and is therefore, in violation of the fundamental constitutional principle which permits a public official to recover damages only for those defamatory falsehoods which defendant in fact published with knowledge of their falsity or with knowledge of facts indicating their probable falsity.

"5. Each of said verdicts is inconsistent, as a matter of law, with each of the verdicts of the jury on paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43 and 44 of the amended complaint.

"6. Each of said verdicts is a compromise verdict." (Tr. 770-2057; SR 136-151)

The motion for new trial was overruled by the trial court. (Tr. 2058; SR 152)

L.

DEFENDANT'S ASSIGNMENT OF ERRORS TO THE SUPREME COURT OF INDIANA.

Defendant's assignment of errors to the Supreme Court of Indiana was timely filed and reads as follows (omitting caption and signatures):

> "The appellant [Indianapolis Newspapers, Inc.] avers that there is manifest error in the judgment and proceedings in this cause, which is prejudicial to appellant, in this:
>
> 1. The court erred in overruling appellant's motion for new trial.*
>
> 2. The court erred in overruling appellant's motion for summary judgment.
>
> 3. The court erred in denying appellant the right to subpoena and inspect the books and records of the law firm of Lewis and Fields." (Tr. 1; SR 155)

*Under Indiana appellate procedure, the only permissible assigned error, with respect to matters occurring at trial, is that the trial court erred in overruling appellant's motion for new trial. Such assigned error, therefore, properly preserves for review on appeal all matters specified as grounds for the motion for new trial to the extent that such matters are briefed by the appellant in its brief to the Supreme Court of Indiana.

M.

QUESTIONS BRIEFED BY DEFENDANT IN ITS BRIEF ON APPEAL TO THE SUPREME COURT OF INDIANA.

In its brief on appeal to the Supreme Court of Indiana, defendant presented and fully discussed the following Constitutional questions, based upon this Court's rulings in *New York Times* v. *Sullivan* (1964), 376 U. S. 254, and cases following:

1. The Six Verdicts in Favor of Appellee Are Not Sustained by Sufficient Evidence and Are Contrary to Law:
   a. There Was Not Sufficient Evidence to Show that any Publication Had in Fact Been Read and Understood as Appellee Alleged. (App. Br. 44)
   b. There Was Not Sufficient Evidence to Show Falsity or Actual Malice. (App. Br. 55)
   c. There Was Not Sufficient Evidence to Show that Appellee Was Damaged. (App. Br. 70)
2. Verdicts Contrary to Law Because Inconsistent. (App. Br. 77)
3. Errors as to Evidence, Instructions and Argument with Respect to Ill Will. (App. Br. 90)
4. The Court Erred in Admitting into Evidence Numerous Hearsay Documents and Testimony Pertaining to Matters About Which Appellant Had No Knowledge When It Published the Articles Sued Upon, and in Instructing the Jury as to the Effect of Such Evidence:
   a. Under *New York Times* Knowledge or Recklessness Is Determined Not by What Appellant Could Have Learned on Investigation, but that of Which Appellant Was in Fact Aware. (App. Br. 120)
   b. The Trial Court Ignored the *New York*

Times Rule and Admitted Evidence of Every Description Regardless of Complete Absence of Any Knowledge or Awareness on the Part of Appellant. (App. Br. 125)

c. The Trial Court Compounded the Error by then Instructing the Jury It Could Consider All this Evidence on the Issue of Reckless Disregard of the Truth. (App. Br. 139)

d. Any Such Evidence Offered on The Issue of Falsity Was Erroneously Admitted Over Appellant's Objections on the Grounds of Incompetence or Hearsay. (App. Br. 143)

5. Errors Relating to Instructions:

a. Error in Giving Appellee's Tendered Instruction No. 2. (App. Br. 157)

b. Errors in Giving Appellee's Tendered Instructions Nos. 4, 5 and 8, and in Refusing Appellant's Tendered Instructions Nos. 7 and 9. (App. Br. 164)

c. Error in Giving Appellee's Tendered Instruction No. 6. (App. Br. 169).

Each of these alleged errors was considered and rejected by the affirming opinion of the Supreme Court of Indiana.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 621

INDIANAPOLIS NEWSPAPERS, INC.,
Petitioner,

vs.

ROBERT H. FIELDS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

THOMAS M. SCANLON,
RAYMOND W. GRAY, JR.,
1313 Merchants Bank Building,
Indianapolis, Indiana 46204,
Attorneys for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. .....

INDIANAPOLIS NEWSPAPERS, INC.,
Petitioner,

vs.

ROBERT H. FIELDS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

Indianapolis Newspapers, Inc. hereby petitions that a writ of certiorari issue to review the judgment of the Supreme Court of Indiana, entered on June 5, 1970, in *Indianapolis Newspapers, Inc.* v. *Robert H. Fields, et al.*, No. 1067 S 96 in the Supreme Court of Indiana.

I.

JUDGMENT AND OPINIONS BELOW.

The Supreme Court of Indiana by an equally divided court affirmed the judgment of the trial court below. Two judges voted to reverse (reversing opinion) and two to affirm (affirming opinion), the fifth judge of such court

having disqualified himself. Such decision and opinions are not yet reported but are set forth in the Appendix hereto, *infra*.

II.

JURISDICTION.

The judgment of the Supreme Court of Indiana was entered on June 5, 1970. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3). The judgment of the Supreme Court of Indiana violates the rights of Petitioner guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

III.

STATEMENT OF QUESTIONS PRESENTED.

The complaint for libel, in 44 separate legal paragraphs based on 44 separate daily issues of Petitioner's newspaper, alleged that Respondent, the Sheriff of Marion County, was libeled by criticism of conduct of the sheriff's office. The jury returned 38 verdicts for Petitioner and 6 for Respondent in the total amount of $60,000.

---

* Record references herein are as follows:

"App. ...." refers to the Appendix attached to this Petition.

"Sep. App. ...." refers to the Separate Appendix filed herewith.

"Tr. ...." refers to the Transcript of the record and evidence in the trial court and as filed with the Supreme Court of Indiana (in 8 volumes with pages consecutively numbered).

"SR ...." refers to the Summary of Record portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

"SE ...." refers to the Summary of Evidence portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

All of such references are to portions of the Record before the Supreme Court of Indiana, as certified to by the Clerk of that Court and now lodged with the Clerk of this Court.

The questions presented for review are:

1. Was there sufficient clear and convincing proof to satisfy the standard established by this Court for libel actions by public officials?

a. Was such proof sufficient where Respondent made no claim he was libeled by any published statement by Petitioner but only by "meanings" (that Respondent was guilty of the crimes of murder, malicious prosecution and intimidating a witness) which he alleged were conveyed when, but *only* when, each of 44 publications was read in full context and in context with all the prior publications; where there was no evidence that any person had so read any one of such publications and received any such "meanings," and where the jury was instructed that to find for Respondent it need only apply *New York Times* malice tests to the "meanings" which Respondent alleged were so implied and not to statements actually published by Petitioner?

b. Was the evidence Constitutionally sufficient to show malice by Petitioner in publishing, after it became a part of a Grand Jury proceeding, that part of a sworn statement of a jail prisoner, McAdams, accusing a deputy, King, of fatally beating another prisoner, even assuming such accusation was false where all other parts of such statement making similar accusations against King as to another prisoner were admitted to be true, and where the statement was taken by a deputy coroner and Petitioner's reporters in the chambers of, and under the direction of, a Criminal Court Judge, all of whom advised Petitioner they believed the statement was entirely truthful and continued to express such belief even after Respondent claimed to have secured a "repudiation" of such accusation but only after his deputies following his orders searched for, found and brought McAdams back to the jail, although he had been

given complete freedom by the Court, and held him in the jail until he signed the "repudiation," after which he was rewarded with a bottle of whiskey and released?

2. Did the rulings of the trial and Supreme Court of the State of Indiana conform to the Constitutional standard established by this Court in *New York Times* and following decisions?

a. Were Petitioner's said Constitutional rights violated where, although there was no prayer for punitive damages, the trial court over objection: (1) admitted evidence of prior hatred or ill will for Respondent by one of Petitioner's reporters, not shown to have been related to the inception of the alleged libelous articles, (2) instructed the jury to consider such evidence "only upon the issue of whether or not the Petitioner published the articles in question with knowledge of falsity or with reckless disregard" and (3) permitted Respondent's jury argument that under the court's instruction, such evidence of ill will equaled actual malice?

b. Were Petitioner's said Constitutional rights violated by the admission into evidence of voluminous hearsay documents and testimony pertaining to matters about which there was no evidence that it had knowledge when it published the articles in question (but about which it conceivably could have learned if it had exhaustively checked every available source of information before publishing) and by the trial court's instruction to the jury that "In resolving the issue of reckless disregard, * * * you may give due consideration to the facts you find defendant knew at the time of any such publication, together with all other circumstances such as reliability or lack of reliability of its informations [and] the sources of additional information available to defendant and known by it to be available."?

c. In determining on appeal the sufficiency of the evidence to show actual malice, did the Supreme Court of Indiana comply with Constitutional requirements in refusing to apply the *New York Times* standard of clear and convincing proof and in applying the much less demanding general common law rule of whether the evidence most favorable to the Respondent, together with all reasonable inferences, indicated some evidence to support each of the material allegations of the complaint?

IV.

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are the First and Fourteenth Amendments to the United States Constitution:

AMENDMENT I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U. S. C. A. Const. Amend. I, p. 15.

AMENDMENT XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U. S. C. A. Const. Amend. XIV, § 1, p. 288.

V.

STATEMENT OF THE CASE.

This libel action by Respondent Sheriff against Petitioner (and Eugene C. Pulliam and Eugene S. Pulliam, individually) publishers of The Indianapolis Star, a daily newspaper, was based upon 66 separate articles and editorials published on 44 different days from October 27 through December 28, 1965. The Separate Appendix, filed herewith, contains the publications sued upon (Sep. App. A 1-171) and a summary of the complaint and answer (asserting the privilege defense). (Sep. App. A 172-182.)

The publications pertained to the deaths of two inmates of the jail, operated by the Sheriff's department, both of whom had been viciously beaten and left for days lying in their own filth, naked and suffering from pneumonia, on the floor of a basement cage, without beds, toilet facilities or running water; accusations by other inmates and former inmates that depufy sheriffs had been responsible for these beatings as well as numerous others; and the grand jury investigation which followed. (Sep. App. A 1-171.)

The case was tried to a jury for eight weeks, most of which time was spent by Respondent in literally flooding the record with (1) prior ill will evidence wholly unrelated to the publications in question, and (2) incompetent and irrelevant hearsay evidence as to all the available information of which Petitioner could have learned and published, but had not, all over Petitioner's repeated objection that such evidence was being admitted in plain violation of the principles of *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), and *Garrison* v. *Louisiana*, 379 U. S. 64 (1964). (Sep. App. A 203.)

At the close of all the evidence, the trial court directed

verdicts in favor of the two individual defendants, but overruled Petitioner's motion for directed verdicts addressed to each of the 44 separate paragraphs of complaint. (Sept. App. A 203.)

In final argument to the jury, Respondent, over objection, was permitted to equate the prior ill will evidence with proof of actual malice. (Sep. App. A 204-205.)

In instructing the jury, the trial court (1) refused instructions tendered by Petitioner which were vital to a proper understanding of the actual malice issue as constitutionally defined by this Court, and (2) gave instructions tendered by Respondent which were in plain violation of Petitioner's First Amendment rights, all over proper objections. The Separate Appendix contains the trial court's instructions to the jury, Petitioner's objections thereto, and Petitioner's tendered instructions which were refused. (Sep. App. A 206-230.)

The jury returned verdicts for Petitioner on 38 Complaint Paragraphs, and for Respondent on 6 (Complaint Paragraphs 12, 14, 18, 20, 37, and 40) in the total amount of $60,000, and judgment was entered accordingly. (Sep. App. A 231-232.) Such verdicts were utterly inconsistent under the evidence.

Petitioner's motion for new trial, with supporting memorandum, in which all of the foregoing Constitutional questions were again presented, was overruled. (Sep. App. A 233-240.)

Petitioner appealed the 6 adverse verdicts (no cross-appeal being perfected) to the Indiana Supreme Court (by assigning as error the overruling of Petitioner's motion for new trial—(Sep. App. A 240), properly presenting and fully briefing each of the Constitutional questions presented herein. (Sep. App. A 241-242.)

The Indiana Supreme Court affirmed by an equally divided court. The affirming opinion considered and rejected each of Petitioner's Constitutional claims. (App. 1a, 20a-63a.)

VI.

REASONS FOR GRANTING WRIT.

1. Preliminary Statement.

Beatings and murder of jail inmates behind the closed doors of a jail, demand investigation and complete and immediate report to the public. Only a free press will do this. To carry out this mission, Petitioner of necessity has to depend in large measure upon jail inmates for information. A jail is unique. The public can only learn what has happened inside from inmates and deputies, and deputies are known to be less than candid concerning their own actions especially with newspaper reporters. Arising in this framework this case demanded the application of *New York Times* principles. The Indiana courts refused to apply them.

Respondent sued Petitioner on literally every one of tens of thousands of words it had published during a two-month period on a variety of subjects, all of which were privileged, without it ever being alleged or proved that any single published statement about the Respondent was false, defamatory or published with actual malice. This resulted from the folowing:

1. Although the 44 publications contained no accusation against Respondent personally, but only against his deputies or department, Respondent asserted that he personally was libeled, not by any statement made in the publications, but by certain alleged "meanings" (that Respondent was guilty of certain crimes), which he alleged

each publication implied when, but *only* when, it was read in full context and in context with all previous publications (Sep. App. A 175-181);

2. Respondent offered no evidence that any person so read any one of the 44 publications; and

3. He persuaded the trial court to instruct the jury, over objections, that to prove malice he merely had to prove Petitioner knew such "meanings," not statements actually published, were false, or so probably false that to imply them constituted reckless disregard of whether or not they were false, in fact. (Sep. App. A 219-221.)

From publication to trial, about eighteen months, Petitioner was subjected to intensive discovery (e. g., depositions, by Respondent, of more than 100 witnesses, consisting of approximately 2500 pages of testimony, and answers to more than 400 interrogatories propounded by Respondent), followed by a trial of eight weeks, resulting in an 8,000 page, 4-foot tall, record upon which to base an appeal to the Supreme Court of Indiana, followed by this proceeding.

During such eighteen-month period, Respondent, and his extensive staff and attorneys, conducted an exhaustive investigation, extending to several states, concerning every comment published by Petitioner relating to Respondent's office during his two-year term and over objection was permitted to introduce all information it produced (Sep. App. A 198-202), resulting in an eight-week trial, and then persuaded the trial court to instruct the jury that Petitioner was charged with all such information from "sources" known to Petitioner to be available. (Sep. App. A 218.)

Respondent also persuaded the trial court, over objection, (a) to admit a great volume of prior ill will evidence unrelated to either the inception or the subject of the publications sued on, for the express purpose of

proving Petitioner's "proclivity to be reckless." (Sep. App. A 196); (b) to instruct the jury that all such ill will evidence should be considered solely on the issue of malice (Sep. App. A 221); and (c) to permit Respondent to argue to the jury such instruction meant such evidence of ill will in and of itself proved actual malice. (Sep. App. A 204-205.)

2. The Evidence Was Constitutionally Deficient to Show Defamation or Actual Malice.

a. Proof of Defamation.

The trial court erroneously refused to direct verdicts for Petitioner because of Respondent's failure to offer any evidence that any one read any of the 44 publications and received the "meanings" as he alleged, and also erroneously instructed that the jury should determine whether the meanings invented by Respondent were conveyed by each publication in the light case upon it by preceding publications *if shown by the evidence* over Petitioner's objection that there plainly was no such evidence. (Sep. App. A 219-221.)

Expectantly, confusion and inconsistency characterized the verdicts. Of the 38 verdicts for Petitioner, 11 were based upon the first 11 publications which included the only ones which could conceivably be read as containing any criticism of Respondent personally. (Sep. App. A 2-60.) The 6 for Respondent were all based upon truthful and routine publications. (Sep. App. A 60, 68, 88, 97, 152, 157.)

Typical of the latter is the 40th publication (Sep. App. A 157), published on December 18, which read:

"JAIL PROBE WITNESS TO SERVE OUT TERM

Judge Eugene M. Fife Jr. of Criminal Court, Division 1, yesterday ordered Charles P. McAdams to serve the remainder of his six-month jail term at the Indiana State Farm, for his own safety, after denying his request for release.

McAdams, 35 years old, triggered an investigation of the Marion County Jail in October, when he signed a statement in which he said he saw a deputy sheriff beat a prisoner, Elmer L. Reagan, 50, who later died.

Judge Fife freed McAdams on Oct. 25, commuting a six-month sentence for violation of the Offense Against Property Act, to time served. McAdams, however, repudiated his statement after he was questioned by sheriff's deputies, before and after his testimony before the grand jury, and Fife ordered McAdams' jail term reinstated.

In yesterday's habeas corpus hearings, McAdams' attorney, William C. Erbecker, attacked the reinstatement of the sentence by Fife, saying once the judge had altered the commitment to time served, the judge no longer had power to reinstate the sentence.

Fife overruled the point. However, he said that, due to reports he had received that McAdams feared for his safety in the jail, he was going to order him to serve the remainder of his term at the State Farm.

McAdams is eligible for release in February."

Respondent is not mentioned, by name or office. There was absolutely no evidence: that anything said in the article was false, that anyone read the publication as containing any reference whatever to Respondent, much less a defamatory one, or that anyone read it in context with all prior articles and received any of the "meanings" from the totality of such publications. The First Amendment forbids

the substitution of a legal presumption for such vital proof. *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 288-292 (1964); *Rosenblatt* v. *Baer*, 383 U. S. 75, 80-81 (1965).

Such verdicts cannot stand if this court means that debate on public issues should be "uninhibited, robust and wide open," *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964), because it would mean that a newspaper publisher before publishing any story which was known to be factually true would first have to read such story in context with all previously published stories to determine possible defamatory "meanings" about unnamed public officials derived only from the totality of such publications.

b. Proof of Malice.

On malice, the trial court instructed the jury that Respondent was only required to prove that the accusations of crimes, which Respondent claimed were implied by the publications when read as alleged, were false and published with actual malice and not that the McAdams' statement or any other published statement had itself been false and published with actual malice:

> "Plaintiff has the burden of proving,
>
> "First that the publication accused plaintiff of the crimes he alleges . . .
>
> "Second: *That the accusations were false.*
>
> "Third: That defendant knew said *accusations* were false or published them with a reckless disregard of truth . . ." (Sep. App. A 219-220.) (Emphasis added.)

Applying this instruction, even if the jury believed every statement in all 44 publications was absolutely true, it could still have found for Respondent on all 44 counts.

Petitioner's objection pointed out that where Respondent has elected to base his claim not on what was published, but upon "meanings" which Respondent alleges were im-

plicit, he must prove not only falsity and actual malice as to the alleged "meanings" but also as to the published statements which he has alleged gave rise to those "meanings." (Sep. App. A 220-221.)*

The prejudicial impact of this instruction is clear when it is applied to the testimony of the assistant publisher of Petitioner who, when pressed for his knowledge of facts indicating that Respondent was guilty of the three crimes protested, "I don't think that we charged him with any crime, so how would I have information about him being guilty of a crime? * * * I don't think he was guilty of any of that nor did we so charge." (Tr. 5488-5493; SE 829b-829c.)

The publisher's protestation that Petitioner did not say or think that the Respondent was guilty of murder, malicious prosecution or intimidation of a witness, plus such erroneous instruction made a plaintiff's verdict almost mandatory. Obviously, this falls far short of satisfying the Constitutional requirements of "clear and convincing" proof of knowledge of falsity or reckless disregard as to the statements *actually published*.

The affirming opinion ignored all the above, held such erroneous instruction "is adequate and does exactly what appellant's objection demands" (App. 50a), and then stated:

> "* * * If appellant knew that McAdams' story was false or knew facts which indicated its probable falsity, then it published with actual malice the accusations that appellee was trying to protect a deputy from

* The trial court, in fact, gave Petitioner's tendered instruction on this theory (Sep. App. A 211-212), the jury thus having been told in one instruction that falsity and actual malice must be found as to both published statements and alleged meanings, and in the instruction here involved that falsity and actual malice must be found only as to the alleged meanings. The two instructions were utterly inconsistent.

murder charges by intimidating McAdams into repudiating his story and by prosecuting Brown." (App. 31a.)

Even so defined, Respondent's proof as to actual malice "lacks the convincing clarity which the constitutional standard demands." *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 285, 286 (1964). Without question Reagan had been viciously beaten in the jail and allowed to lie naked on the floor of a basement cage, covered with human excrement, suffering with pneumonia and fifteen fractured ribs, before he was finally taken to the hospital where he died three weeks later on August 7, 1965. (Tr. 2508; SE 90-92.) The first public report appeared in the Indianapolis Times newspaper, on August 10, and quoted the Sheriff's Department that Reagan had been injured in jail fights. (Tr. 2327; SE 50-51.) Upon inquiry at the Sheriff's Department, Petitioner discovered that no one knew what had happened to Reagan and no investigation of any kind could be found. Not a single scrap of paper in the entire department indicated that Reagan had even been injured, much less when, how, or by whom. (Tr. 2697-2701; 7146-7150; SE 230-231; 1157-1158.) Yet only two days later the Sheriff's Department filed an affidavit of murder against another inmate, William A. Brown, a mental incompetent wholly unable to defend himself (Tr. 2541; SE 115) based on back-dated reports of deputies and a one-sentence statement of four alcoholic inmates who, the department claimed, saw Brown attack Reagan. (Tr. 4831-4846; 7392-7394; SE 645-646; 1212.)

Petitioner reported these events in its newspaper as they occurred. (Tr. 2508; 2540-2541; SE 90-92; 113-114; 115.) Later, Petitioner's reporter Johnson received a tip from a deputy that Reagan had not been beaten by Brown but had been beaten and tear gassed by an angry deputy sheriff King. (Tr. 4160-4163; 4170; 7151-7153; SE 511-512;

1151-1159.) Another deputy tipster produced McAdams as a person with knowledge on the subject (Tr. 7160-7161; SE 1162), who, in a sworn statement, stated he had witnessed King beat Reagan and on another occasion had witnessed King beat and tear gas an injured black soldier for requesting medicine. (Tr. 2595; SE 170-172.) The Sheriff's Department admitted as completely true that portion of the McAdams' statement charging that King had beaten and tear gassed the injured black soldier who had asked him for medicine (Tr. 6429-6433; SE 1030), adding greatly to the presumption of truthfulness as to the portion of the statement that King had similarly beaten Reagan.

Petitioner's other knowledge of McAdams' statement strongly indicated veracity. McAdams had told Respondent's deputy Cottey that he wanted to talk to a newspaper reporter about what he had seen in the jail. Cottey so informed Johnson who had never before heard of McAdams. (Tr. 7569-7570; SE 1225.) Johnson reported this to Criminal Court Judge Eugene Fife, who had jurisdiction in McAdams' case, who ordered McAdams brought to his chambers. McAdams told the contents of his statement at first orally to Judge Fife. Judge Fife then directed a deputy coroner Gaither to take a written statement. This was done several days later, at which time McAdams repeated the story in exactly the same form in Judge Fife's chambers with no one present other than McAdams, Gaither and Johnson. Judge Fife's bailiff, Patterson, was in and out of the room. A notary public was brought in after the statement was taken. (Tr. 7164-7170; SE 1164-1166.)

Judge Fife was an experienced jurist, skilled in making judgments as to the veracity of such persons as McAdams. Gaither was similarly experienced as a result of many years as a policeman assigned to homicide cases before his substantial experience in the Coroner's Office. (Tr. 7391-7392;

SE 1211.) As bailiff, Patterson had seen and heard many witnesses. All three advised Petitioner they believed the McAdams statement was truthful, pointing out to support their conclusion among other things: that Judge Fife who had jurisdiction in McAdams' case had warned McAdams about the penalties of perjury before the statement was taken; that it was incredible for a man in McAdams' circumstances to accuse a deputy sheriff of murder even to secure a release of a six-month sentence already partially served, that McAdams' story was too complicated to have been invented and was told by McAdams in exactly the same form on the two occasions; that McAdams had nothing to gain and everything to fear if he did not tell the truth, including being thrown back in jail to face the deputies he had accused of murder, plus the important fact that King admitted beating and tear gassing the injured black soldier who asked for medicine. (Tr. 6704-6709; 6722-6724; 6730; SE 1083-1084; 1087-1089; Tr. 7396-7399; SE 1212.)

Judge Fife, apprehensive some harm might come to McAdams if he were returned to the jail to face King and other deputies after they learned of his accusations, reduced his six-months' sentence to time already served, released him and ordered his statement delivered to the Prosecutor for presentment to the Grand Jury. (Tr. 6709-6710; SE 1084; 7183-7185; SE 1167-1168.) Petitioner's reporter then asked Judge Fife if Petitioner should make further efforts to investigate the matters contained in the McAdams statement, at which time Judge Fife instructed him to "leave it to the Grand Jury." (Tr. 7181-7183; SE 1167.) Petitioner published the McAdams statement only after it had been presented to and became a part of the Grand Jury proceedings. (Tr. 7188-7194; SE 1169.)

In contrast, Petitioner's knowledge of the circumstances

surrounding the alleged "repudiation" by McAdams (Tr. 2605-2609; SE 174-180) justified serious doubts as to it. Although requested not to do so, the prosecutor, who was Respondent's best friend and political sponsor, immediately delivered a copy of McAdams' statement to Respondent. (Tr. 7185; SE 1168.) Respondent read the McAdams statement. He knew the Court had freed McAdams. He knew he had no legal justification for picking him up. He knew the prosecutor's deputies were searching for him to serve him with a subpoena to appear before the Grand Jury. Respondent, nevertheless, issued an emergency order to his deputies to search for, find and bring McAdams not to the Grand Jury, but to the jail. Pursuant to his orders, Respondent's deputies did find McAdams, brought him to the jail where they questioned him concerning his statement. After the prosecutor learned Respondent had McAdams in jail, he caused McAdams to be served with the Grand Jury subpoena. Respondent then ordered one of his deputies to take McAdams to the Grand Jury but to keep him in custody and bring him back to the jail, which was done. Back in the jail McAdams was questioned by Respondent, questioned again by his deputies, shown a bottle of whiskey and promised he could have it later (McAdams was a known alcoholic and was obviously sick and hung-over at the time), questioned again by deputies, asked to sign a "repudiation" of his former statement and then, and only then, late at night, given his freedom and the promised bottle of whiskey. (Tr. 2389; 2612-2619; 4332-4344; 6277; 6282-6286; 6566-6575; SE 187-195; 290-325; 556-559; 998f; 998i-999; 1056-1059.)

Even Respondent's best friend and political sponsor, the prosecutor, testified on trial that these circumstances were not conducive to getting the truth:

"Q. Under those conditions, in the jail, facing the people he had accused, or a member of the staff of a

murder, and given a bottle of whiskey, is it your opinion that those are circumstances that were conducive to getting to the truth, with respect to McAdams?

"A. No, in all honesty, I would say they were not." (Tr. 4091; SE 499.)

Both Judge Fife and Deputy Coroner Gaither stated publicly that they doubted the validity of the McAdams repudiation, the former stating:

> "When he started that jail house 'weaseling' it was obvious he had been expertly coached. We have a free man who indicated he would cooperate with the proper authorities and he did so until he was released from jail. Something has happened." (Tr. 49; SE 39.)

Gaither said:

> "So far, everything we've turned over to the Grand Jury might as well have been poured out in the hall. I believe McAdams told the truth in his statement to me but I think he's lying now and he has been expertly coached. He's been told what to say, how to say it and he's lying. But . . . there's a mess in that jail and sooner or later it will come out. Trying to cover it up will be like trying to sweep an elephant under the rug." (Tr. 49; SE 39.)

Although Petitioner was not allowed to see the "repudiation" until weeks later (Tr. 7567; SE 1224-1225) it reported fully Respondent's statements concerning it and its contents. (Tr. 45; SR 35.)

These are only some salient facts which, in spite of what appeared as possible minor discrepancies, indicated to Petitioner that the McAdams statement was truthful or at least as likely to be truthful as the alleged "repudiation" and both were fully publicized in Petitioner's paper. The affirming opinion ignores all of this and refers only to information which came to Petitioner's attention *after* the McAdams story had been published, to wit:

(1) that the day after the McAdams story had been published, Petitioner learned that "McAdams had repudiated it in Court to Judge Fife, besides earlier repudiating to Respondent" (App. 32a); and

(2) that ten days after the McAdams story had been published, Petitioner learned that hospital records indicated that Reagan had already been admitted to the [redacted]pital at the time McAdams said he was being beaten by the deputy (also fully reported). (App. 31a-32a.)

Notwithstanding the undisputed fact that Petitioner immediately published all subsequently acquired information casting doubt on the McAdams statement (Tr. 49; 63; SE 39; 52), that opinion holds that actual malice could be found from the fact that Petitioner did not continue to republish all such information in every subsequent story. (App. 32a.) In other words, the mere repetition, as background for subsequent news stories, that McAdams had made the original accusation against deputy King, not Respondent (which he had), without also repeating everything Petitioner had previously published which cast doubt about the accusation, constituted a republication of the McAdams accusation with actual malice as to Respondent.

Probably because the full import of Respondent's reading in context theory was not fully appreciated by them, it did not occur to the writers of the affirming opinion that if Respondent was entitled, on the meaning issue, to the benefit of a legal presumption that all the publications had been read "in context" (so as to permit Respondent to prove a libel of himself in every one of 44 separate publications) (App. 23a-24a), Petitioner must be given the benefit of the same legal presumption on that issue. Such a double standard is Constitutionally unacceptable.

Equally baseless was the conclusion of the affirming opinion that there was sufficient evidence to show that Petitioner had "to some extent fabricated" the article in Complaint Exhibit 1 which related the various information Petitioner had received from Respondent's deputies and which eventually led to the production of McAdams by a deputy. (App. 34a-35a.) Not only was there no such evidence but it is simply inconceivable that the jury could have believed Petitioner fabricated any part of such a story and yet returned a verdict for Petitioner on that publication, as well as on 37 others which followed it. (Sep. App. A 231-232.)

Demonstrating how flatly it refused to apply *New York Times* principles, the affirming opinion also held contrary to the clear mandate of this Court that actual malice could have been found from the fact that Petitioner made no effort to "verify the McAdams story, although McAdams was a petty criminal, had an unsavory reputation and was obviously making a deal to gain his freedom" noting that after McAdams had given his statement to Judge Fife, Petitioner "raised the issue of further verification of McAdams' story but the matter was dropped." (App. 39a.) The opinion unfairly fails to state the undisputed fact that Judge Fife instructed Petitioner to investigate no further and "leave it to the Grand Jury." (Tr. 7181-7183; SE 1167.)

3. Evidence Rulings, Instructions and Argument Unconstitutionally Told This Jury Evidence of Prior Ill Will Proved Malice.

It was Petitioner's position throughout this litigation that this Court's statement in *Garrison* v. *Louisiana*, 379 U. S. 64, 73 (1964): "Debate of public issues will not be uninhibited if the speaker must run the risk that it will

be proved in court that he spoke out of hatred" means discussion of public officials and issues will not be robust unless evidence of hatred *per se* is excluded. (Sep. App. A 183, 196-197.)

No amount of ill will can change truth to falsity or falsity to truth. No amount of ill will can add to or detract from knowledge or awareness of fact. Ill will is, therefore, completely irrelevant but necessarily prejudicial, to the issue of actual malice as this Court has defined it. If the poison of ill will evidence is admitted on some theory of showing "proclivity" or "state of mind," this Court's established rule that malice can only be proved by evidence of knowledge of falsity or reckless disregard will be sapped of any meaning. Some evidence of ill will can almost always be found which will suffice to trigger a jury verdict in favor of a public official. While to hate is human, all humans condemn hatred in others. Any evidence of hate, however slight, plus severe criticism is almost tantamount to a libel verdict for any public official. As this Court noted in *Garrison*, in the case of charges against a popular political figure, "it may be almost impossible to show freedom from ill will or selfish political motives" (379 U. S. at 74), with the only practical recourse being "to make only statements which 'steer far wider of the unlawful zone.'" (*New York Times Co.* v. *Sullivan*, 374 U. S. at 279.)

Contrary to *Garrison*, Respondent argued that evidence of prior ill will (of but one of the more than fifty reporters and editors who contributed to the content of the publication sued upon—Tr. 7379; SE 1191), indicated Petitioner was more inclined to publish with "knowledge of falsity" or with reckless disregard. (Sep. App. A 204-205.) Over objection, he was permitted: (1) to introduce a great volume of prior ill will evidence, including prior

publications not sued upon, but "critical" of Respondent and his department (Sep. App. A 185-197); (2) his tendered instruction that such evidence was to be considered "only" on the issue of "knowledge of falsity or with reckless disregard" (Sep. App. A 221); and (3) to argue to the jury that by this instruction the trial court meant such evidence proved malice. (Sep. App. A 204-205.) Petitioner had also attempted to avoid the prejudice of such ill will evidence by a Motion for a Pretrial Order excluding such evidence which also was overruled. (Sep. App. A 183-184.)

Even the affirming opinion flatly admits: "ill will evidence does *not* tend to prove that appellant had *knowledge* of the falsity of its publications," (App. 37a), but nevertheless apparently unmindful of the complete inconsistency, held that such evidence had been properly admitted, approved an instruction that told the jury it should be considered "*only* on the issue of * * * *knowledge* of falsity or with reckless disregard" and approved Respondent's final jury argument "That the significance of this evidence is * * * (Petitioner would be) more likely * * * to publish *falsehoods* against Sheriff Fields." The affirming opinion purports to dispose of *Garrision* and other opinions of this Court with the simplistic statement that the "question of the admissibility of ill will evidence did not arise in those cases," completely disregarding the irreconciliable conflict between the admission of such evidence and this Court's admonitions in those cases, particularly *Garrison*. (App. 37a.)

It is true, until now, the precise evidenciary question has not been presented and this is strong reason for granting this petition. If the above statement from *Garrison* is to have any meaning at all, evidence of prior ill will must of necessity be excluded, at least where, as here, punitive damages are not claimed and such evidence

serves absolutely no purpose except to prevent the jury from deciding the malice issue by the proper standard.

If the affirming opinion stands, no citizen or newspaper, having previously expressed the slightest ill will for a public official, could possibly feel free to criticize his official conduct—with the absurd result that the most disliked (and probably incompetent or dishonest) public official would be the most free from criticism. And especially would this be so if prior published criticism can itself be transmuted into evidence of hatred, as was done here. (Sep. App. A 185-195.) A more "chilling effect" upon public debate would be difficult to imagine.

The prejudice resulting from the admission of ill will evidence was compounded by the court's instructions and counsel's jury argument. Petitioner's tendered instruction that such evidence "is not to be considered by you" on the issue of malice was refused (Sep. App. A 229), and the trial court gave, over objection, Respondent's tendered instruction that ill will evidence was to be considered "only" on the issue of actual malice (Sep. App. A 221.) Respondent in final argument, over objection, told the jury that in this instruction the court was saying ill will evidence is proof of malice. For example:

> "Now what did Virginia Wilkes say? * * * 'I'll get the son-of-a-bitch, if it takes a year.' Do you know when that was" That was in December of 1964, and after all of this, on December 28th of 1965, don't you think he got him? Just like he told Virginia Wilkes he was going to do, one year prior. *Don't talk to me about malice in this case!*
>
> "The significance of this evidence is this:
>
> "Would a defendant, and I am talking about Indianapolis Newspapers, Inc. because they are chargeable with the action of Rick Johnson, would the Indianapolis Newspapers, Inc., be more likely *with that*

attitude, to publish falsehoods against Sheriff Fields, than otherwise?—I think the question answers itself.

"MR. SCANLON: Pardon me. Mr. Brown, I hate to interrupt you, but, Your Honor, may I register an objection to the reference to ill will, or malice, made by Mr. Brown, and move it be striken, and may I have a continuing objection, in case you overrule the objection and the motion.

"COURT: The motion is overruled, and you have a continuing objection.

"(Mr. Brown continues:)

"Now this is what the Court will tell you the law is:

" 'Evidence tending to establish that the defendant harbored ill will toward plaintiff prior to the publications in question may be considered *only* upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not.'—This is another instruction which will be read to you by the Court." (Emphasis added.) (Sep. App. A 204-205.)

This Court has repeatedly held that the jury in these cases is not to be misled into thinking that an intent to harm (ill will) is the same as an intent to harm through falsehood (publishing with knowledge of falsity or probable falsity). *Garrison* v. *Louisiana*, 379 U. S. 64, 73 (1964); *Henry* v. *Collins*, 380 U. S. 356, 357 (1964). It is impossible to tell whether or not this jury was so misled, for as noted in the reversing opinion below:

"Appellee's burden of proving that publication was made with knowledge of falsity or with a reckless disregard for the truth cannot be satisfied solely on the basis of ill will. Under the *New York Times* criteria, false statements made with ill will are not actionable. There must still be proof of knowledge of falsity or reckless disregard of the truth."

"The trial court's instruction number 30 contravenes this very principle. It stated:

> "'Evidence tending to establish that the defendant harbored ill-will toward plaintiff prior to the publications in question may be considered only on the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard of whether they were false or not.'

"Under this construction the jury might have based its finding of knowledge of falsity merely on proof of ill will." (App. 6a.)

Goldwater v. *Ginsberg* (2 Cir. 1969), 414 F. 2d 324, *cert. den.*, 396 U. S. 1049 (1970), will probably be urged by Respondent to sanction the admissibility of evidence of ill will in the sense of hatred or hostility or the use of such evidence as a basis for an inference of malice in the Constitutional sense. It does neither. There the defendants raised no evidence questions. Their contention as to ill will was only that the jury had been erroneously permitted to find actual malice from evidence of negligence and ill will. The Second Circuit pointed out that the trial court had emphasized in the charge that neither negligence nor failure to investigate on the one hand nor ill will, bias or spite on the other standing alone were sufficient to establish either a knowledge of falsity or a reckless disregard of the truth or falsity of the materials used. 414 F. 2d at 342. (No such instruction was given here.)

Actually, evidence of ill will in the sense of hatred was not involved or mentioned in *Goldwater*. The evidence referred to was a statement contained in a letter written by one of the authors to Walter Reuther which the court said indicated that the author "had decided to asperse Senator Goldwater's character on preconceived psychiatric or psychological grounds of their own fabrication" (414

F. 2d at 329), and to "constitute evidence as to whether it was a preconceived plan to attack Senator Goldwater *regardless of the facts*" (p. 340). It was to this evidence and not to any evidence of ill will or hatred which the Second Circuit opinion refers to in saying "evidence * * * of motive and of intent, may be adduced" to show malice (p. 342).

In *Garrison*, this Court clearly stated the reasons for the rule that malice in the Constitutional sense cannot be established by evidence of ill will in the sense of hatred or hostility even if an intent to injure is inferable:

> "Debate on public issues will not be uninhibited if the speaker *must run the risk* that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Under a rule like the Louisiana, permitting a finding of malice based on an intent merely to inflict harm rather than an intent to inflict harm through falsehood, 'it becomes a hazardous matter to speak out against a popular politician with the result that the dishonest and incompetent will be shielded.' Noel, Defamation of Public Officers and Candidates, 49 Col. L. Rev. 875, 893 (1949). Moreover '[i]n the case of charges against a popular figure . . . it may be almost impossible to show freedom from ill-will or selfish political motives' * * *.
>
> "Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned. And since '. . . erroneous statement is inevitable in free debate and . . . it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive" . . . 376 U. S., at pp. 271-272, only those false statements made with the high degree of awareness of their probable falsity demanded by *New York Times*, may be the subject of either civil or criminal sanctions. For speech concerning public affairs is more than self-expression; it is

the essence of self-government. . . ." (379 U. S. at 73-75.) (Emphasis added.)

There is a vast difference between evidence of knowledge of falsity or reckless disregard (which also tends to show ill will), and evidence of prior ill will which does not tend to show any knowledge or awareness whatever with respect to the truth or falsity of later publications. It is not Petitioner's position that evidence of knowledge of falsity or reckless disregard is inadmissible because it also tends to show ill will, but only that evidence of prior ill will, which does not have the slightest tendency to prove actual malice and which is highly prejudicial, must be excluded if debate on public issues is to remain "uninhibited, robust and wide open."

It is the public's right to be informed which must be protected. The expense of this extremely complicated litigation would have ruined many publishers. If before reporting "hot news" of murders in a jail, or statements made to a Grand Jury about a deputy, a publisher must first examine every word previously published about the sheriff and his deputies and also cross-examine its reporters as to their statements or attitudes regarding the sheriff "or run the risk it will be proved in court that he spoke out of hatred" the public's right to be informed will suffer substantially.

4. Issue of Reckless Disregard Was Unconstitutionally Decided on the Basis of What Petitioner Could Have Learned After Exhaustive Investigation.

The trial court adopted the rule that Petitioner was "aware" of any information which was in existence pertaining to any incident, inmate or deputy referred to in the articles, whether sued on or not, as shown by the following colloquy which occurred after Petitioner had objected to evidence of this character:

"JUDGE: I still say you're aware of it.

"MR. SCANLON: Beg pardon?

"JUDGE: I say you're aware of these conversations, so forth and so on.

"MR. SCANLON: You still say that we are aware of them?

"JUDGE: Maybe not of the exact piece of conversation, but of the theory of it and that the fact that you are printing concerning that particular thing in your newspaper to me would indicate that you were aware of it.

"MR. SCANLON: You mean that if we write an article then, based upon what an inmate or former inmate has told, or stated in a sworn statement, then it is Your Honor's instruction that evidence as to what that inmate told other people or what that inmate did, at the time he is describing, is something that we are aware of? If I understand Your Honor?

"JUDGE: Go ahead. . . . That's perfectly all right. If I make a mistake, I just make a mistake. That's what we've got the Supreme and Appellate Courts for." (Tr. 5011-5032; SE 678a-678j.)

Without any evidence that Petitioner had any knowledge of any such information, thousands of pages of records and other material found in the files of courts, police, jails, hospitals, sheriffs and physicians, plus dozens of conversations outside of Petitioner's presence, the product of eighteen months intensive work by Respondent, his deputies and lawyers, all were admitted on the trial court's theory that Petitioner was "aware" of them and, therefore, charged with knowledge of their contents on the issue of malice. (Sep. App. A 198-202.) By such rulings throughout the trial the jury was in effect told by the trial court that Petitioner was to be charged with knowledge of all such evidence of which it could have learned in determining the issue of reckless disregard.

After listening to this type of "evidence" during the

major portion of eight weeks over Petitioner's constant objections, the jury was instructed that "In resolving the issue of reckless disregard * * * you may give due consideration to the facts you find defendant knew * * * [and] the *sources* of additional information available to defendant and known, by it, to be available." (Sep. App. A 218.) Since all such evidence was from "sources" known by newspapermen to be "available," the combined effect on the jury was to charge the Petitioner with full knowledge of all such evidence representing eighteen months of diligent search in determining the issue of reckless disregard in this case dealing with "hot news."

In addition, a negligence standard was cleverly planted into the minds of the jury by the use of the words "care for the rights of others" in another of Respondent's tendered instructions defining "reckless disregard," also given over Petitioner's objection:

> "Reckless disregard of truth describes the state of mind of one who publishes an untruth with such knowledge of existing facts and circumstances refuting such untruth, *as to evince an abandonment of any care for the rights of others and a heedless indifference to the wrongful injury which is likely to result from such publication.*" (Sep. App. A 216-217.) (Emphasis added.)

The trial court refused Petitioner's tendered instruction:

> "In determining whether defendant published an accusation or statement concerning the plaintiff with reckless disregard of whether it was false or not, I instruct you that defendant had no duty to check the accuracy or truthfulness of any accusation or statement before publishing it, whether it was made by a third person or by defendant. The fact, if you find it to be a fact, that defendant may have failed to make some investigation or check some record which plaintiff feels should have been made or checked before

publishing such an accusation or statement is completely irrelevant. The question is not whether the defendant was negligent or reckless in failing to check the accuracy of what they published. The question is —did defendant at the time have actual knowledge that what it was publishing was false or so probably false that such publishing constituted reckless disregard of its own knowledge concerning the truth." (Sep. App. A 229-230.)

Contrary to *New York Times* and *St. Amant* v. *Thompson*, 390 U. S. 727 (1968), the jury was permitted to decide the malice issue not on Petitioner's actual knowledge or awareness, but on what it could have learned upon exhaustive investigation or in exercise of "care for the rights of others."

Moreover, the prejudice here was made inevitable by the following instruction tendered by Respondent and given by the trial court (over Petitioner's objection that it was misleading and argumentative and invaded the province of the jury as to the crucial issue of actual malice— Sep. App. A 213-215):

> "Only those false statements made with the high degree of awareness of their probable falsity may be the subject of civil libel. Even though publications are used as a tool for political ends, does not automatically bring it under the protective mantle of the constitution. The use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected. Known falsehoods fall into that class of utterances which are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Hence the knowingly false statement made with reckless disregard of the truth does not enjoy constitutional protection." (Sep. App. A 213-214.)

The language of this instruction was lifted—piecemeal—from statements by this Court in *Garrison* (see 376 U. S. at 73, *et seq.*) as to the reasons which had led to the adoption of the *New York Times* rule. The instruction, however, included only a portion of such reasoning, not all of it, the practical effect of which was to tell the jury in no uncertain terms that this action could not even have been *brought* if Petitioner had not published false and defamatory statements about Respondent with knowledge of their falsity or with a high degree of awareness of their probable falsity.

This was a flagrant and highly prejudicial misuse of this Court's opinion in *Garrison*. The statements utilized were not meant to be statements of law, to be incorporated in jury instructions, and their reiteration here served absolutely no purpose except to mislead and confuse the jury. See *Bernardo* v. *Bethlehem Steel Company* (2 Cir. 1963), 314 F. 2d 604, 609; *Lisansky* v. *United States* (4 Cir. 1929), 31 F. 2d 846, 852, *cert. den.*, 279 U. S. 873 (1929).

The affirming opinion below approved this instruction without qualification:

> "Appellant argues that this instruction is not a statement of the law relevant to the case but is an argument; it is the 'reasoning' in *Garrison* v. *Louisiana*, *supra*, and therefore not suited to be included in a jury instruction; it invades the province of the jury by assuming controverted facts.
>
> "We believe it is clear from reading this instruction that it properly states the law *as far as it goes*. It does not assume any facts nor invade the province of the jury. The fact that the language is based on the *Garrison* case adds support to it and labeling it 'reasoning' does not seem relevant to us." (App. 46a) (Emphasis added.)

5. The Supreme Court of Indiana, in Determining the Sufficiency of the Evidence to Show Actual Malice, Did Not Apply the Constitutional Standard.

The affirming opinion stated "In reviewing a challenge to the sufficiency of the evidence this Court will not weigh the evidence nor determine the credibility of witnesses. We will look to that evidence most favorable to appellee and the reasonable inferences therefrom, and determine whether that evidence, if believed, is sufficient to support the verdict for appellee. If it is, then the verdict will be affirmed. 2 I. L. E., Appeals, §§ 571, 573, 574.". (App. 23a-24a, 31a, 35a.)

The citations are to Indiana common law decisions holding "If there is some evidence, or reasonable inferences that may be drawn therefrom, to sustain each material element essential to recovery, the judgment must be affirmed." This is obviously a vastly less demanding standard than a determination of whether the evidence "lacks the convincing clarity which the Constitutional standards demands." *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 285-286 (1964); *Beckley Newspapers* v. *Hanks*, 389 U. S. 81, 83 (1967).

VII.

CONCLUSION.

Each of the above Constitutional errors alone merits the granting of this petition. However, the case for granting the writ becomes an absolute necessity when the cumulative effect of all the Constitutional errors in a trial of this magnitude is fully appreciated.

Respectfully submitted,

THOMAS M. SCANLON,
RAYMOND W. GRAY, JR.,
1313 Merchants Bank Building,
Indianapolis, Indiana 46204,
Attorneys for Petitioner.

APPENDIX.

JUDGMENT OF THE SUPREME COURT OF INDIANA.

IN THE SUPREME COURT OF INDIANA.

INDIANAPOLIS NEWSPAPERS, INC., an Indiana Corporation,
Appellant,
vs.
ROBERT H. FIELDS, EUGENE C. PULLIAM, EUGENE S. PULLIAM,
Appellees.

No. 1067 S 96.

APPEAL FROM THE SHELBY CIRCUIT COURT.
HON. HAROLD G. BARGER, *Judge.*

Richard M. Givan, Judge, having disqualified himself from participating in this cause and the four remaining judges of this Court participating being equally divided, Norman F. Arterburn, Judge and Donald H. Hunter, Chief Justice are of the opinion that the decision of the trial court should be reversed, while Roger O. DeBruler, Judge and Amos W. Jackson, Judge are of the opinion that the decision of the trial court should be affirmed,

NOW THEREFORE, pursuant to Rule AP. 15(E), the judgment of the trial court is affirmed and the separate opinions of the participating judges herein are as follows:

/s/ DONALD H. HUNTER,
Donald H. Hunter,
Chief Justice.

REVERSING OPINION OF THE SUPREME COURT OF INDIANA.

ARTERBURN, *J.* (separate opinion).

This is an action for libel brought in forty-four paragraphs of complaint by the appellee, Robert H. Fields, Sheriff of Marion County, against the appellant, Indianapolis Newspapers, Inc., publisher of the Indianapolis Star, a daily newspaper published in Indianapolis, Indiana. The action is based upon newspaper articles and editorials, sixty-two in number, pertaining to the Marion County Sheriff's department and jail supervision published on forty-four separate days during a period between October 27 and December 28, 1965. The jury returned a verdict for the appellee-sheriff for $60,000.00 on six of the paragraphs out of the forty-four.

The series of publications upon which the complaint is based was brought about when a newspaper reporter (Rick Johnson) in October, 1965 learned that two inmates (Elmer Reagan and Danner Crick) had died following beatings in the old Marion County jail the previous July. The story, when it broke, revealed as a fact that Elmer Reagan, age 50, was an alcoholic and had been confined in a basement cell in the jail in July. Following a beating, in which a number of his ribs were fractured, he was left lying naked in his own filth on the basement floor of the jail, without a bed, toilet facilities or running water. On July 14, 1965 he was admitted to the hospital in the condition described and died from pneumonia on August 7, 1965 as a result of this condition.

The newspaper article also revealed that another inmate, an alcoholic, Danner Crick, age 62, was found in practically

the same condition in the jail with broken ribs and was taken to the hospital and died on July 14, 1965 as a result of such condition.

A deputy sheriff, one Cottey, is alleged to have tipped off the newspaper reporter Johnson that an inmate, Charles P. McAdams, had some information concerning the incidents involving brutality in the jail. Reporter Johnson interviewed McAdams, an inmate, and then took him before a Marion Criminal Court judge where he made a statement under oath before the deputy coroner, alleging that Reagon had been beaten by deputy sheriff King.

Following the statement taken by the deputy coroner, a grand jury investigation was called concerning conditions in the jail. The evidence shows that when Sheriff Fields learned of the McAdams statement through the prosecuting attorney's office he ordered his deputies to pick up McAdams, a former inmate, to bring him before the grand jury. However, McAdams was taken to the jail first, where he was interviewed by the sheriff and deputies. McAdams was then taken to the grand jury later that day in the custody of the sheriff's deputy and, immediately after his testimony, was returned to the jail. He was not released from custody until after he had made a statement repudiating his charge that he had seen a sheriff's deputy beat up Reagan. The evidence shows he was given a flask of whiskey when he left the jail.

The sheriff claimed that it was not his deputies but rather a mental patient, William A. Brown, who was guilty of the beating and the death of Reagan when the mental patient was placed in the same cell with Reagan. Brown was 27 years of age and a former mental patient in a Philadelphia hospital. He was charged with second degree murder of Reagan, arraigned and returned to the Marion County General Hospital for psychiatric treatment and

observation. When tried he was found not guilty because of insanity.

The substance of appellee-sheriff's charge is that from the series of articles innuendoes may be drawn therefrom that he was:

(1) An accessory after the fact of the murder of Elmer Reagan and Danner Crick in that he attempted to protect his guilty deputies.

(2) Guilty of prosecuting an innocent man, William A. Brown, the mental patient, for murder.

(3) Guilty of intimidating a Grand Jury witness, Charles P. McAdams.

We point out that the publications did not flatly say "Sheriff Fields is an accessory to the murder of a prisoner by a deputy." The newspaper articles, however, reported that McAdams had stated and accused deputy sheriff King of beating and murdering Elmer Reagan, and that McAdams had been picked up and interrogated by Sheriff Fields and his deputies before he made the repudiation.

There is no question that the evidence in this case shows a great deal of animosity and ill-will by the reporter Johnson towards Sheriff Fields because of controversies relating to the release of news connected with the Sheriff's department for some time past. The evidence shows threats by Johnson to "get the sheriff" and that he was an "S. B." It is also plain that the series of news items upon which the verdict is based were truthful except in a few details, that is, it is unquestioned that Reagan and Crick were severely beaten up, neglected and uncared for in the jail at the time stated in the newspaper articles and that they were found in filth, dying in the jail, and taken to the hospital where they did die; that someone was at fault, either another inmate or a member of the sheriff's department.

The story about the beating in jail and the deaths was

not discovered until some months afterwards by the newspaper. It is uncontroverted that after the news stories broke, McAdams, the informant, was picked up by the sheriff's office and interrogated and a statement taken from him; that likewise Cottey, another deputy sheriff who, it was said, had tipped off reporter Johnson, was suspended and interrogated by the sheriff, and an affidavit taken from him in which he denied ever having informed Johnson of the facts. The real dispute is whether or not a deputy was guilty of the beatings, as stated in the newspaper articles and the inferences which reflect upon the sheriff. The series of articles dealt mainly with the activities of the sheriff's deputies. In a few instances Sheriff Fields' name was mentioned. It is argued by appellant that the innuendoes of wrongful acts that might be drawn as charged cannot be transmuted to the sheriff personally under the New York Times rule. *New York Times Co.* v. *Sullivan* (1964), 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686.

Appellant contends that a great deal of evidence during the trial was admitted which was improper. The transcript in this case is voluminous. It consists of eight volumes. It is pointed out that a great deal of this evidence goes to the question of falsity of statements made in the newspaper. The appellant contends that to admit such evidence without showing it came to the knowledge of the appellant is immensely prejudicial in a jury trial. The appellee, however, contends the court instructed the jury that as to the issue of malice, only that evidence of falsity of which appellant had pre-publication knowledge was to be considered. Appellant says that such a procedure results in practically "drowning" defendant and then attempting to revive him in the end by an instruction. *St. Amant* v. *Thompson* (1968), 390 U. S. 727, 88 S. Ct. 1323, 20 L. Ed. 2d 262.

It is likewise argued in this case by the appellant that evidence of ill-will alone may not go to prove knowledge of falsity or reckless disregard of the truth. Appellee's burden of proving that publication was made with knowledge of falsity or with a reckless disregard for the truth cannot be satisfied solely on the basis of evidence of ill-will. Under the *New York Times* criteria, false statements made with ill-will are not actionable. There must still be proof of knowledge of falsity or reckless disregard of the truth. The trial court's instruction number 30 contravenes this very principle. It stated:

> "Evidence tending to establish that the defendant harbored ill-will toward plaintiff prior to the publications in question may be considered only on the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not."

Under this instruction the jury might have based its finding of knowledge of falsity merely on proof of ill-will. In *Garrison* v. *Louisiana* (1964), 379 U. S. 64, 85 S. Ct. 209, 13 L. Ed. 2d 125 it was said:

> "Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and ascertainment of the truth."
>
> See also *Rosenblatt* v. *Baer* (1966), 383 U. S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597; *Rose* v. *Koch* (1967), 278 Minn. 235, 154 N. W. 2d 409.

Another issue presented for our consideration is the contention that there is no proof of damages to the appellee-sheriff. The appellee put on witnesses who testified that the sheriff's reputation was injured as the result of the series of newspaper articles. The appellant contends

that the sheriff's reputation would naturally be damaged by reporting the truthful facts regarding the two severe beatings inmates and their deaths and the facts relating thereto; that the evidence makes no distinction between the damages resulting from truthful reporting and that of any alleged malicious publication of alleged falsehood.

Be that as it may, we need not go into all these serious questions presented for our consideration for the reason that there appears to us to be a more obvious ground which requires a reversal, namely, the admission of prejudicial hearsay evidence. The motion for a new trial lists over one-hundred items of alleged hearsay as highly prejudicial before a jury. To go into each one of these items would unduly extend this opinion. We will consider only a few:

The first instance that comes to our attention is an affidavit taken from deputy sheriff Cottey while he was under suspension following his being named as a tipster to the newspaper reporter. The affidavit was introduced by the appellee-sheriff on the theory that it denied the fact that, as the newspaper claimed, Cottey had tipped off the investigation. Whether or not an affidavit may be used to prove the falsity of a newspaper item, particularly when the witness is available, is the single issue here. The record of the offer, objections and ruling thereon appears in the record as follows, along with the voluminous three-page single-spaced affidavit admitted in the evidence:

> "Mr. Jacobs: We offer in evidence [Plaintiff's Exhibit] Reagan 133, 134 and 135.
>
> "Mr. Scanlon: Could I ask a preliminary question Your Honor?
>
> "Judge: Yes sir.
>
> "Mr. Scanlon: Mr. Fields, Mr. Cottey continued as a Deputy Sheriff after he was reinstated following his suspension by you and he continues to be a Deputy Sheriff to today, does he not?
>
> "A. Yes, I believe so.

"MR. SCANLON: And you have subpoenaed him on behalf of the plaintiff in this case, have you not?

"A. I think probably we have.

"MR. SCANLON: You don't know of any reason why he can't come here to testify, do you?

"A. No.

"MR. SCANLON: We object to the hearsay document Your Honor. The man is under subpoena by the plaintiff, is available, no reason why he can't come here and testify before the jury.

"MR. JACOBS: This, Your Honor, is an affidavit that was given by a member of the Department in regard to the matter in which . . . concerning the matter for which he was suspended. Your Honor probably does not recall, I will remind you, that this man Cottey is the one who is designated in the opening statement by Mr. Scanlon as having been one of the Deputy tipsters. So far as these subpoenas are concerned, as the evidence has shown already . . .

"MR. SCANLON: Excuse me Mr. Jacobs, could we be heard in the absence of the Jury Your Honor, on this, please.

"MR. JACOBS: It doesn't make any difference to me.

"JUDGE: Objection overruled. Show Plaintiff's Exhibit 133, 134 and 135 introduced in evidence." (Tr., p. 6303, l. 17 to p. 6305, l. 7; Summary of Evidence, pp. 1004 to 1005.)

"(Exhibits Read to Jury by Mr. Jacobs)."

The Cottey affidavit (Plaintiff's Exhibits 133, 134 and 135) reads as follows:

"State of Indiana, } ss.
County of Marion. }

AFFIDAVIT.

"I, Arthur Cottey, being first duly sworn upon my oath, do depose and say:

"That I am a deputy sheriff of Marion County, Indiana and I have been continually so employed for about the last nine and one half (9½) years. I am forty-seven (47) years old and was born February 14, 1918. I live at 609 Beechway Drive, Apartment 17 in Indianapolis, Indiana.

"I was employed as a deputy sheriff by Robert A. O'Neil in August, 1956 and was assigned to work in the jail division. While assigned to the jail I worked under Captain Frank Hawkins and Captain Lee Eads, when Robert O'Neil was sheriff; under Captain Dushan Stiko and Captain William Chance, when James Hiner was sheriff; and under Captain William Chance and Captain Richard Scott under the present administration of Sheriff Robert Fields. I have been subjected to disciplinary action on two occasions in the entire nine and one-half years, and on no others, and both of these involved suspensions with pay and both were when Richard Scott was commander in the jail. The first suspension was for five days with pay and happened just after a jail escape, of which I was supposed to have had prior information of. The second suspension is the present one, and I don't really know what it is for. Captain Richard Scott called me into his office about the jail break and questioned me about any knowledge I might have about it. I told him I had no knowledge, and even requested that I be given a lie detector examination to verify the truth of my statements. He, Captain Scott, refused to permit me to take the examination, and suspended me, as I said before.

"I really don't know why, but I believe Captain Scott has something against me and has tried on occasion to get me. I can remember several instances which took place under the administration of Robert O'Neil which might cause some hard feelings; the circumstances were, that I was working the jail desk and Captain Scott was a Lieutenant on the road patrol and would come back to the jail every time we had a disturbance of any kind and would want to know what was going on, as the two divisions were separate and he didn't have anything to do with the jail. I told him that he didn't have anything to do with the jail and wouldn't let him in. He, Captain Scott, had been told about the jail break I mentioned before and just used me as someone to pass the blame to. Also; just before I went on vacation, there was an incident involving a call card to a bondsman; Captain Scott saw the name of one bondsman on the call card and saw that another bondsman had taken the man out, and without even asking me what had actually happened, took me off the jail desk and transferred me to the fourth floor.

"I *now* one Charles McAdams as being a present prisoner in the Marion County Jail, and a man who has been in jail several times in the last few years. Also, I have known Charles McAdams on the street for a total of about ten (10) years. I have always been friendly with McAdams, and he even asked me on several occasions to talk to an Indianapolis Police Department Detective, Sergeant Gene Meyers, in an attempt to get his sentence reduced.

"I remember that Charles McAdams was the cell boss in the BR cell block of the old jail and sometime after the new jail opened up he became the jail barber, and I believe a floor boy on one of the shifts. When I would come to work on the third shift, I noticed that he had almost the run of the jail. I have talked to Charlie McAdams on several occasions in the jail and about many different subjects, most of which I don't remember. I do remember one conversation that I had with McAdams, which occurred about two or three

days before my vacation started (about October 20, 1965); Charlie told me that he had something to tell the newspaper about the incident he saw occur in the jail. I asked him if he wanted to tell me about it and he said that he wasn't talking to anyone but the newspapers. I didn't hear anything more about the conversation until I notified by my son that I had been suspended. I later received a letter saying that I was suspended.

"All that I know about Charles McAdams is that he is a big liar, as proved by all the different stories he told about the jail beatings. If McAdams says that I told him anything about jail beatings or that he told me anything about jail beatings, he is telling a big lie. Also, if anyone says that I contacted any newspaper reporters or anyone else and had them talk to Charles McAdams, they are wrong.

"I have known Rick Johnson, a reporter for the Indianapolis Star for at least fifteen (15) years. I was a boxer when I met Rick Johnson and he wrote several newspaper articles about me as a fighter. I consider that Rick Johnson is a fairly good friend of mine. For the past several years, even back when O'Neil was Sheriff, he has called me on the phone and talked to me and, I have called him on the phone. Our conversations have been about many different things; we have talked about the Sheriff's Office, about the jail, about my job, about politics, and about almost anything that you could think of. Never in any of our conversations have I ever told Rick Johnson about any beatings in the jail, nor have I told him anything about any other incidents which would hurt the department.

"Not only have I not told anyone about any beatings in the jail, I have not witnessed any beatings nor do I know anything about any beatings which occurred in the jail. I have seen a lot of men hit in the jail, and I have hit a lot, but no one has ever been beaten as far as I know.

"While, as I have just stated, I have never said anything about beatings in the jail, I might have made

some statements which sound like I have a grudge against the department. I kid around a lot and sometimes I might say something, which if overheard and took the wrong way, would make you believe that I was trying to get someone I usually talk to the older men on the department and when we talk to each other, both of us would know whether we were kidding around, but someone overhearing the conversation would not.

"I do not have any feeling against either Sheriff Robert Fields or Major Alva Funk, and to the best of my memory I have never did anything or said anything that would hurt either of them. I do think that the sheriff goes along with a lot of things in the department because he doesn't know what is really going on.

"I have never said anything about Major Funk or anyone else in this department having or getting any tickets to the Indianapolis 500 Speedway. I did make a remark to one of the jail deputies about Major Funk having received some tickets to the State Fair, which were for the deputies. This is the only remark I made, and I meant nothing by it.

"If I had seen any beating in the jail or anything else that was wrong, I would have approached my commanding officer and told him about it. If, after this, nothing was done about the matter, I feel that I would have a perfect right to go the newspapers, or anyone else who could do something.

"Everything I have said in this statement is the truth so far as I know it, and I am willing to take a lie detector test to verify any of my answers. Further, if there is any suspicion that I am lieing, I request that I be given an examination so that any suspicion may be resolved.

"I have read the three pages of this affidavit and have initialed each page thereof and each page contains the statements exactly as I have given them, and I swear that each statement is true and correct this 20th day of December, 1965."

Just what the significance of whether Deputy Cottey did or did not tip off the newspaper and whether it is true or false is difficult to understand. However, the fact that appellee had the burden of proving a statement to be false does not alter the accepted rules of evidence for such proof. Hearsay cannot be used to satisfy that burden.

It is our opinion the law is plain. Admission of hearsay of this type prevents cross-examination and confrontation. These elements are important to credible evidence. Under these principles mere affidavits are inadmissible. Wigmore 3rd Ed., §§ 1709 and 1384.

It cannot be seriously argued that the foregoing long affidavit is relevant and proper to prove the falsity of the inference that the sheriff failed to make a prompt investigation of the beatings. The affidavit was taken in November, 1965. The beatings and deaths of the two inmates occurred in July, 1965.

Under the same theory the appellee-sheriff offered in evidence a deposition of Cottey while he, the sheriff, was on the witness stand. It appears this was in direct violation of the statute in this state, which prevents the use of a deposition when the witness is available at the time of the trial. Burns' Ind. Stat. Anno. § 2-1506.

The record in this respect and the objections thereto appear as follows:

> "The plaintiff, ROBERT H. FIELDS, was recalled to the witness stand, for continued
>
> *Redirect Examination.*
>
> "Questions by Mr. Jacobs, Attorney for the Plaintiff:
>
> MR. JACOBS: Now, Your Honor, we wish to read from the deposition of ARTHUR COTTEY, taken on—I think it was about—what?—October—I'll get the date later. I'll read the questions.

"Mr. Scanlon: To which the defendants object for the reason it is improper redirect examination. It is pure hearsay. It is an attempt to read from the deposition of one of plaintiff's agents and employees, and most of the, or many of the questions and answers are not relevant to the matters referred to on cross-examination, the matter on cross-examination being a matter of as best defendants could address themselves to the impeaching or contradicting the hearsay evidence admitted on direct examination of this witness, being the statement of plaintiff's agent, Arthur L. Cottey, as deputy, concerning conversations with Rick Johnson.

Also, that Arthur L. Cottey was agent of the plaintiff and subpoenaed by the plaintiff and is available in Indianapolis as a witness.

"Court: I'll overrule the objection.

"Mr. Jacobs: Question 7. Question—this is Arthur Cottey: 'Did you ever have a conversation with Rick Johnson regarding the death of Elmer L. Reagan?'

"Answer, 'Never.'

"Question, 'Did you ever have a conversation with Rick Johnson regarding Elmer L. Reagan?' Answer, 'No, I can't say as I did.'

"Or Charles P. McAdams? Answer, 'No.'

"Did you ever say to Rick Johnson this, or this in substance, in regard to the death of Elmer L. Reagan: 'You haven't even got half the story. The nut didn't kill that man, a Deputy did'?

"Did I ever hear that before?

"Question, 'Did you ever say that to Rick Johnson?'

"Answer, 'No.'

"Did you ever say to Rick Johnson: 'Don't start nosing around the jail, they (referring to prisoners and deputies) are scared to death. No one dares talk about it'?

"Answer, 'Did I ever say to Rick Johnson "quit nosing around the jail"'?

(The previous question was read to the witness by the notary.)

"Answer, 'No, no, I never.'

"Question, 'Did you in regard to anything else, say that?'

"Answer, 'I never told him to quit nosing around the jail. I didn't have the right to tell him that.'

"Question, 'Did you tell him prisoners and deputies were scared to death?' Answer, 'no.'

"Did you ever say to Rick Johnson, that is, did you state the name of a deputy sheriff . . .

"Mr. Jacobs: Strike that.

"Did you ever relate to Rick Johnson a report that a prisoner had told a Deputy Sheriff, you or any other Deputy Sheriff, that he had seen other Deputies beat Reagan on two different occasions on July 14th, 1965?

"Answer, 'No.'

"Mr. Jacobs: 17 is passed.

"Question, 'Did you ever provide Rick Johnson with the name of the alleged attacker and with the names of other prisoners who saw the attack and were willing to talk?'

"Answer, 'No.'

"Question, 'Did you ever give Rick Johnson the names of Deputies who were involved in the beating, we are referring to the Reagan beating, or had first hand knowledge of it?' Answer, 'No.'

"Did you ever provide Rick Johnson with the names of prisoners in the cell block who could have seen the beating?' Answer, 'No.'"

Here we have a deposition which had no more standing than that of an affidavit and was therefore hearsay. It was entered in evidence over objections. Deputy sheriff Cottey was available as a witness. This deposition was offered on the theory that it went to prove that the newspaper statement that it was tipped off by deputy sheriff Cottey was false. Of course the best evidence to prove such a fact would be the direct statements of the witnesses who were present or alleged to have been present at the time—not their affidavits or statements made to someone

else. McCormick on Evidence, § 234, p. 491; Wigmore, 3rd Ed., § 1411.

In another instance the appellee-sheriff attempted to bolster his own testimony and to prove the falsity of a newspaper report that McAdams said he had seen a deputy do the beating and the further implication that the sheriff had intimidated McAdams into making repudiation of the statements. The appellee-sheriff offered evidence on this point by taking the stand himself and repeating conversations he had with McAdams privately in the Sheriff's office, outside the presence of the appellant.

The record shows the following:

"Interrogation of Sheriff Fields by his attorney:

"Q. Did you have a conversation with him?

"A. I did.

"Q. Will you state to the Jury what that conversation was? Just a moment, they want to object. I asked him to state to the Jury what his conversation with McAdams was.

"MR. SCANLON: Well we have a continuing objection to this on both the ground of hearsay and on the ground . . . or the general statement that I've made in Objection Number One, so I don't have to repeat it all, Your Honor is familiar with it.

"MR. JACOBS: I think this conversation Your Honor is the context of the articles that have been introduced and is admissible as to the conversation with McAdams. There has been vast publications speaking of this contact with this witness.

"JUDGE: Objection overruled.

"Q. Just go ahead now and tell the Jury just what the conversation was there with McAdams?

"A. Well he walked in my office, I told him to sit down. He sat down in a chair in front of my desk. I said I understand you're not feeling too well Charlie. And he says, no, I've got a terrible hangover. I offered him a cigarette, which I think he took. I had the statement on my desk at that time. I said, I've read

this statement you gave Charlie, I said I was informed that you said that this was some kind of political deal to get me out as Sheriff. Is that right? And he says that statement's false. I says, well now wait a minute. You say this statement is false, this whole statement is false? He says yes, that statement's just a bunch of lies. And I said, well get back to this other thing. What's this that you said that this was some kind of political deal to get me. And he says well that's what the purpose of it was. He says this was cooked up with Rick Johnson and Bud Cottey. I said why did you give them such a statement? He says, well because they said they'd get me out of jail, and he said that Johnson also said he'd get me a job, but I don't need him to get a job. I also asked him, I said, did you tell the truth before the Grand Jury? And he said yes."

This hearsay was highly prejudicial on the issue of the falsity of the news stories.

Another instance of pure hearsay occurred when the sheriff took the stand and testified that Ed Lewis, his former law partner, had told him in substance that Johnson, the reporter, had come to him to see if he could make a deal with the sheriff with reference to retractions in the controversy arising from the publications. We need not set out the substance of the statements which the sheriff said his former law partner had told him Johnson told him. We are not here concerned with the fact that Lewis could and did take the stand for the Sheriff and repeated his conversation with the reporter Johnson of the newspaper. We are concerned here with the fact that the appellee in this case takes the stand and repeats what he claims was told him by this witness, his former law partner. Appellant claims this was highly prejudicial hearsay, used not only to bolster the testimony of Lewis, but also contradict that of Johnson.

Another typical example of hearsay is the admission into evidence of a letter written by the sheriff to Dr. Popplewell, Superintendent of General Hospital on March 25, 1964, about 18 months before the publications in question, complaining about a certain jail physician's poor service and the need for some medical supplies. There is no attempt to show that appellant-newspaper had any knowledge of the contents of such a letter being sent. This hearsay could not possibly be relevant on the basis of proof of falsity of any issue under the circumstances.

In another instance deputy sheriff Mellene was put on the stand and related a conversation he had with Charles McAdams (not a party to the action) in which he stated that he had asked McAdams to tell the truth in the jury room and McAdams told him that Rick Johnson, the newspaper reporter, was an "S.B." and had it in for the sheriff.

There are too many instances of the above character of repeating conversations of third parties, to enumerate here. We can only give the above examples of the erroneous admissions of hearsay testimony, most of it highly prejudicial. The record is replete with such hearsay. It is borne out with the following colloquy between the trial court and appellant's counsel at one point where objections were made because of hearsay that was offered and admitted:

> "MR. SCANLON: . . . . It is the defendant's position, first, that if any such evidence is offered on that issue of falsity, it must be competent evidence, and hearsay evidence has been introduced on that issue, so that
>
> "JUDGE: That is your contention that it was hearsay and you object to it on that theory?
>
> "MR. SCANLON: Yes, I don't know why it would be other than hearsay because, for instance, conversations between Deputy Sheriff's and other people not

in the presence of the defendants, it seems to me would be hearsay.

"JUDGE: Well there would be very little evidence in this case Mr. Scanlon, if all this testimony had to be in the presence of the defendants.

"MR. SCANLON: That's true.

"JUDGE: Yes, sir.

"MR. SCANLON: I certainly agree with that. Unfortunately

"JUDGE: It would take about two days to try it."

The trial lasted approximately two months.

For the reasons stated, the judgment should be reversed, with directions to grant the appellant a new trial.

HUNTER, *C.J.* Concurs.

AFFIRMING OPINION OF THE SUPREME COURT OF INDIANA.

DeBruler, *J.* (separate opinion):

This appeal arises from a libel action in the Shelby Circuit Court filed by the appellee, former Marion County Sheriff Robert Fields, against Indianapolis Newspapers, Inc., Eugene C. and Eugene S. Pulliam. Appellee's complaint was in forty-four (44) separate legal paragraphs each one based on different articles and editorials published on forty-four (44) separate days in the Indianapolis Star, a daily newspaper owned by the corporate appellant. The trial commenced on April 18, 1967, and ended June 14, 1967. The parties produced ninety-six (96) witnesses and six hundred sixty-four (664) exhibits. The transcript on appeal runs to seven thousand six hundred fifty-one (7651) pages in eight (8) volumes. A verdict was directed in favor of the two individual defendants and the jury returned a verdict for the appellee on six paragraphs in the total amount of $60,000.00.

The appellee's complaint alleged appellee was libeled in several different respects but the six recovery paragraphs, Nos. 12, 14, 18, 20, 37, 40, all concerned the Reagan case. The basic outline of the facts of the Reagan case are as follows: Elmer Reagan, a fifty-year old alcoholic inmate of the Marion County Jail was admitted to the hospital on July 14, 1965, suffering from injuries received in a beating by another prisoner named George Brown. Reagan died as a result of the beating on August 7, 1965. The appellee who was at that time the Marion County Sheriff, filed charges against Brown on August 13th.

On October 21st, another prisoner named Charles McAdams told Marion County Criminal Court Judge Fife, in an interview in court chambers arranged by appellant's reporter, Rick Johnson, that he witnessed Deputy Sheriff Donavan King beat Reagan on July 14th. On October 22nd, McAdams signed an unsworn statement to that effect and three days later, his sentence was changed by Judge Fife to time served and he was released from jail. The prisoner, McAdams, was interviewed on October 26th, by appellee before and after McAdams' testimony before the Grand Jury investigating the charges. Appellee said McAdams repudiated his accusation concerning the deputy. McAdams also repudiated it in open court before Judge Fife on October 28th, and he was thereupon immediately sent back to jail. The Grand Jury report said McAdams' accusations were false and indicted Brown for murder. At the trial of Brown the jury found that Brown in fact attacked Reagan but he was acquitted by reason of insanity.

On October 27, 1965, the Indianapolis Star began the series of articles which became the subject of this suit. The six recovery paragraphs alleged that appellant intentionally or recklessly published articles which implied false accusations against appellee to the effect that he had committed certain crimes, namely, accessory after the fact to murder, intimidating a Grand Jury witness, and malicious prosecution of an innocent man. Each legal paragraph included twelve rhetorical paragraphs, the first eleven of which were identical for all forty-four (44) legal paragraphs. We shall use complaint paragraph twelve, the first recovery paragraph, as an example and we include only rhetorical paragraph twelve from that complaint paragraph:

> "12. Sunday, November 7, 1965, defendants maliciously published the printed matter reflected in Exhibit 12, hereto attached, having theretofore mali-

ciously, and with premeditated purpose to so do, composed same so as to cause it to convey the false and defamatory meanings set forth below, when read in full context, and in context with previously published printed matter, by defendants, as shown by Exhibits 1 through 11, which are published on the eleven previous days, consecutively, and which contributed to the meanings of Exhibit 12, as hereinafter alleged; and for that purpose are, by reference, made a part of Paragraph Twelve.

"12. (a), 12 (b) and 12 (c). Plaintiff, by reference and adoption, incorporates all allegations contained in sub-paragraphs 12 (a), 12 (b) and 12 (c) of Paragraph One, as though same were copied verbatim at this point."

The sub-paragraphs referred to are as follows:

"a. That plaintiff's deputies, or members of the Marion County Police Force, over whom plaintiff had direction and supervision, had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, and that plaintiff assisted said deputies, as hereinafter alleged, with intent that they would escape punishment.

"b. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide upon one Elmer L. Reagan, then and there a prisoner of the Marion County Jail, plaintiff, without probable cause, maliciously attempted to cause an indictment to be found, or otherwise prosecution to be commenced, against one William A. Brown for the aforesaid murder of felonious homicide of said Elmer L. Reagan, or conspired with others for said purpose.

"c. That in order to assist plaintiff's said deputies, or members of the Marion County Police Force, over whom he had direction and supervision, who had murdered, or otherwise committed felonious homicide

upon one Elmer L. Reagan, plaintiff corruptly, and by force and threats, endeavored to influence, intimidate and impede a witness, to-wit: Charles P. McAdams, in a certain court in the State of Indiana, to-wit: The Criminal Court of Marion County and the Grand Jury thereof, and, by the same means endeavored to obstruct and impede the due administration of justice therein."

Thus, to find for appellee on complaint paragraph No. 12 the jury had to find that the articles comprising Exhibit 12, forming the basis for that paragraph, when read in the context of all the previous articles in Exhibit 1 through 11, accused the appellee of one of the above alleged crimes, that the accusations conveyed by the articles were false, that appellant knew they were false or published them with reckless disregard of their falsity, and that appellee's reputation was damaged thereby.

We will confine our discussion for the most part to the first recovery paragraph, complaint paragraph No. 12, since the other five recovery paragraphs involve basically the same legal issues although the evidence is somewhat different for each.

The appellant alleges the following errors:

I. There was insufficient evidence to support the verdicts.

II. The verdicts were contrary to law because inconsistent.

III. The trial court erred in instructing the jury.

IV. The trial court erred in admitting hearsay evidence.

I.

The appellant's first contention is that the evidence was insufficient to support the verdict in several respects. In reviewing a challenge to the sufficiency of the evidence this Court will not weigh the evidence nor determine the

credibility of witnesses. We will look to that evidence most favorable to appellee and the reasonable inferences therefrom, and determine whether that evidence, if believed, is sufficient to support the verdict for appellee. If it is, then the verdict will be affirmed. 2 T. L. E., Appeals, §§ 571, 573, 574.

(A) Appellant claims that there was insufficient evidence that the articles were in fact read as accusing appellee of any criminal acts.

We point out that on this issue, evidence that appellee was personally accused of *any one* of the three crimes would be sufficient to support the jury verdicts. We believe the evidence was more than ample to permit the jury to find that appellee was personally accused of all three of the crimes set out above in appellee's complaint. The evidence consisted of the articles themselves and the testimony of two witnesses.

There is no question that when read by an ordinary reader in context with the previous articles in the series, the articles comprising Exhibit 12 accused appellee of intimidating McAdams into repudiating his accusations and prosecuting Brown in order to cover up the murder of Reagan by a deputy. (See Appendix for Exhibit 12.)

The appellant did not explicitly accuse appellee of the crimes alleged. However, the accusations were clearly implied by what appellant did say and the way it said it, when read in full context. This context was created by the statements explicitly published; the choice of loaded words; the choice of juxtaposition and sequence of ideas; the rhetorical questions; and the cumulative weight of constant repetition. This context cannot be conveyed by paraphrase but we will set out a few of the items reported in Exhibits 1 through 12.

McAdams' story that a deputy killed Reagan was the

keystone of the whole attack on appellee. If McAdams' story was true, then any repudiation would have been obtained from him by intimidation or bribery, either of which would be tampering with a Grand Jury witness; similarly, the prosecution of Brown would be a malicious one against an innocent man.

The article published on October 27th, the day the series began, reported in detail McAdams' story that he personally witnessed the beating of Reagan by a deputy on July 14, 1965. The Star repeated the essence of this story every day except one, up to and including November 7th, the day of publication of Exhibit 12, and on nineteen (19) days thereafter.

The appellant attempted to buttress McAdams' story by printing that three anonymous tipsters, two of them deputies, had other eyewitnesses to the beating by the deputy; by printing statements of other prisoners and McAdams' girlfriend to the effect that McAdams had told them the story about a deputy beating Reagan and that they believed McAdams; by printing several stories of other incidents of alleged brutality in the jail, some even predating appellee's appointment as Sheriff; and by stating that no investigation was started until circumstances of the death were bared by the Star. It is impossible to understand the devastating nature of this attack without reading the actual exhibits. Unfortunately they comprise sixty-two (62) separate articles and cannot be included in this opinion. At the risk of not fully conveying the clarity of the attack we have included some of the articles in the appendix.

The way the publications accused appellee of intimidating McAdams, a Grand Jury witness, was by repeating McAdams' original story, supporting the truth of it as described above and almost totally ignoring the conflicting evidence; printing that appellee "seized" McAdams and

McAdams repudiated his story only after appellee "interrogated" him; printing that McAdams "vanished" or "disappeared" after the questioning by appellee; repeatedly printing both Marion County Criminal Court judges' comments that Grand Jury witnesses would be protected from harassment and could not be interviewed except in the presence of the judge. In Exhibit 7 (See Appendix) the "protection" issue was followed by setting out the criminal penalties for tampering with a Grand Jury witness, followed immediately by the story that appellee obtained McAdams' repudiation after taking him to jail and interrogating him. The clearest examples of accusing appellee of intimidating McAdams were in the editorials, Exhibits 2 and 3. (See Appendix.)

The publications accused appellee of malicious prosecution of an innocent man, Brown, by emphasizing McAdams' story that a deputy, not Brown, had in fact killed Reagan; implying Brown was shackled at the time and could not have attacked Reagan (See Exhibit 12 in Appendix); stating that the charges against Brown were not filed until after the Star published a report on Reagan's death. (Again see Exhibits 2 and 3 in Appendix.)

Neither is there any doubt that the accusations were against the appellee personally. Appellee is mentioned by name sixty-eight (68) times in the series and twenty-seven (27) times in the first twelve exhibits. Appellee is mentioned by use of the phrase "the sheriff" forty-seven (47) times in the series and twenty-six (26) times in the first twelve exhibits. Appellee was at that time the one and only Marion County Sheriff. The phrase "The Sheriff's Office" or "the Sheriff's Dept." was used seventy-two (72) times in the series and thirty-six (36) times in the first twelve exhibits. In the first twelve exhibits appellee is explicitly named as the person who interrogated McAdams and obtained his repudiation of the story that a deputy

killed Reagan; he is explicitly mentioned as the person under whose jurisdiction the jail is run and who is thus responsible for its operation.

Appellant cites *New York Times* v. *Sullivan* (1964), 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, and *Rosenblatt* v. *Baer* (1966), 383 U. S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597, as support for its position. This case has nothing in common with *New York Times* v. *Sullivan*, *supra*. That case concerned a single publication in which the plaintiff was not mentioned by name or office. Neither is it like *Rosenblatt* v. *Baer*, *supra*, where again, the plaintiff was not mentioned in any way by name or office.

In addition to the articles themselves, Eugene S. Pulliam, a witness for appellant, testified that he thought Exhibit 3 did imply that appellee intimidated McAdams. Exhibit 3 was made a part of the complaint paragraph No. 12 to provide the context in which Exhibit 12 was to be read.

In addition, Judge Davis testified that he read the series of articles as accusing appellee of intimidating a witness and prosecuting an innocent man.

Since appellant did not attack the legal sufficiency of the complaint by demurrer in the trial court it conceded that the articles were *susceptible* of the interpretation alleged by appellee in this complaint. It was for the jury to determine if a reasonable reader using words in their ordinary everyday sense would read the articles as implying the meanings alleged by appellee. *Logan* v. *Logan* (1881), 77 Ind. 558. The jury was not bound to accept appellant's, appellee's or any witness' reading of the exhibits. The jury was so instructed in court instruction number 23 *submitted by the appellant itself*.

(B) Appellant contends there was insufficient evidence that the accusations against appellee implied by the articles were false.

We note here again that the key event in this whole affair was the story by McAdams that Deputy King beat Reagan on July 14th. That story made possible and gave rise to the alleged accusations of crime against appellee. If that story was false, then appellee did not need to intimidate McAdams and prosecute Brown in order to protect Deputy King from murder charges. We believe there was ample evidence to support the jury finding that McAdams' story was false.

McAdams said, in relevant part:

> "On June 5, 1965 I was put in the Marion County Jail awaiting trial on a larceny charge. On July 14, 1965 I had been made assistant cell boss in the BR cell block *on the main floor of the jail.* My cell was in the front of the block where I could see the main floor where the deputies worked and what they called the attorneys cage. On July 14, *at approximately 6 p.m., it was after supper,* I overheard and saw a series of arguments between Sgt. Donovan King and a prisoner in the attorneys cage I knew to be Elmer L. Reagan. King and Reagan were arguing over medicine. Reagan said he wanted his medicine and King told Reagan he was out of medicine. Reagan told King that he couldn't be out of medicine that the doctor had given him a refill that day, July 14. King said I don't give a damn who filled the order there's no medicine for you so I can't give you none. Reagan got mad and called Sgt. King a mother fucker. Sgt. King left the attorneys cage walked to the jail desk to get a handcuff key to unlock the handcuffs which were being used as a lock on the cage. King got the handcuff keys walked back to the cage, unlocked the handcuffs and went inside the cage with Reagan. King grabbed Reagan shoved him and said to Reagan, you'll eat those words . . . King kicked Reagan's ass and grabbed Reagan's arm, said 'you are going downstairs.' King twisted Reagan's arm behind him and pushed him toward the basement door. King and Reagan went down the steps and *deputy Floyd Grandon* [sic] fol-

lowed them both downstairs. There was a few minutes of silence and then I heard a bunch of hollering and screaming going on. In about five minutes Sgt. King and *deputy Grundon* and deputy Don Marshall came back up the steps to the main floor. I believe Marshall was already in the basement.

"In about an hour and a half, that would be approximately 7:30 p.m. July 14, King went back down the basement steps and I heard some more screaming and hollering, it sounded like the man kept screaming and repeating you are killing me, you are killing me. Then there was a bunch of silence. King came back up the steps by himself after about 10 minutes.

"At about 10:45 p.m., *I know because it was just before Sgt. King went off duty.* King brought Reagan back upstairs and took him back to the attorneys cage. Reagan was bent over and moaning and holding his midsection. King said you are a contrary son of a bitch and hit Reagan in the back of the neck and knocked Reagan into the corner by a radiator in the cage . . . You'll watch who you call a mother fucker from now on, King said and I then saw King kick Reagan in the midsection. Reagan screamed when King kicked him. King left the cage and locked it and went downstairs. Reagan kept crying to please get him a doctor. He did this about three or four times. I then heard someone say, you'll get a doctor you son of a bitch. Then everything quieted down. About this time Sgt. Brown, the third shift Sgt. came to work and he and King had a long talk back of the desk on the main floor.

* * * * *

"After Sgt. King and Sgt. Brown had their conversation, King left. Brown made no attempts to get the man medication or give him aid. Reagan just laid there till about 1:30 in the morning. I went to sleep and when I woke up some of the guys in the cell told me they had taken Reagan to the hospital. I heard Reagan died later in the hospital." (Emphasis added.)

The evidence is overwhelming that this story was false. An integral part of McAdams' story was the definiteness as to the time the beating took place on July 14th. His recitation of details made his definiteness seem plausible and lent an air of authenticity to this story. However, the hospital records show that Reagan was admitted at 5:09 p.m. on July 14, 1965 *prior* to the time of the beating according to McAdams' statement. The jail records show that Reagan was *not* in a first floor cell on July 14th, but was in a basement cell, and that Deputy Grunden was not even on duty that day. The *only* scrap of evidence in the whole record that a deputy beat Reagan was McAdams' story. In addition to repudiating this statement to appellee, McAdams repudiated it in open court on October 28th, before Judge Fife who promptly returned him to jail because of it. The Grand Jury report said McAdams' original story was false and they indicted George Brown, another prisoner, for the murder. There were four prisoners who saw Brown attack Reagan and they summoned three deputies who then shackled Brown to prevent further injury to anyone. The jury at Brown's trial found that he had attacked Reagan but was not guilty by reason of insanity. In addition, appellee denied at trial that he intimidated McAdams or prosecuted Brown to cover up a murder. The jury chose to believe appellee and we will not disturb that finding.

We believe there is ample evidence from which the jury could have found that the claim that a deputy killed Reagan was false, there was no attempt by appellees to cover up a murder by a deputy, that appellee did not intimidate McAdams, and that appellee did not prosecute an innocent Brown in order to protect his deputies from a murder charge.

(C) Appellant claims there was insufficient evidence

that appellant published the alleged accusations with knowledge of their falsity or reckless disregard of their truth.

Appellee was a public official seeking damages for defamation by appellant in a series of articles attacking appellee's official conduct. In order for appellee to recover he had to prove that appellant published the defamatory falsehoods with actual malice. *New York Times* v. *Sullivan, supra.* In that case the United States Supreme Court held that the First Amendment guarantee of freedom of the press required that publishing with malice meant publishing with "knowledge that it was false or with reckless disregard of whether it was false or not." In *Garrison* v. *Louisiana* (1964), 379 U. S. 64, 85 S. Ct. 209, 13 L. Ed. 2d 125, that court elaborated on the meaning of "reckless disregard" by saying that publications are made with "reckless disregard" of the truth when the publisher has a "high degree of awareness of their probable falsity."

In reviewing appellant's contention then we must look at the evidence most favorable to appellee to see if it was sufficient to support the jury's finding that appellant published the defamations with knowledge that they were false or with reckless disregard of whether they were false or not.

(1) We emphasize again that the central event in this affair was the story by McAdams that Deputy King beat Reagan. That story created the context and made possible the accusations of crime against appellee. If appellant knew that McAdams' story was false or knew facts which indicated its probable falsity, then it published with actual malice the accusations that appellee was trying to protect a deputy from murder charges by intimidating McAdams into repudiating his story and by prosecuting Brown.

Prior to November 7th, the date of the first recovery paragraph, appellant, including appellant's reporter, Rick

Johnson and its editors, had direct knowledge of the hospital records which showed that Reagan was admitted to the hospital at 5:09 p.m. on July 14, 1965. Appellant knew this contradicted McAdams' story. McAdams said Reagan was beaten the first time at 6:00 p.m., again at 7:30 p.m. and again at 10:45 p.m. He was definite as to the times and even substantiated it by recalling the latter time as being near the time King went off duty. Appellant knew this was not a minor inconsistency that could have resulted from a momentary lapse of memory or slip of the tongue. The hospital records struck at the heart of McAdams' story. However, appellant reported only once the fact that the hospital records showed Reagan was admitted at 5:09 p.m. on July 14th, and the significance of this was not brought out. It was mentioned thirty (30) paragraphs deep into the article:

> "McAdams, who later repudiated his story after questioning by deputies, originally maintained that Reagan was first struck at 6 p.m. July 14.
>
> "Records show Reagan was taken to the hospital at 5:09 p.m. July 14. Did McAdams tell the truth, but make a mistake about the time or day? Or did he make up the story? At least three persons, including his girlfriend, said McAdams told them he saw a deputy beat a man to death."

Appellant continued to publish McAdams' original story but never again mentioned the fundamental time discrepancy.

Appellant also knew that McAdams had already repudiated his story on October 28, 1965, in court to Judge Fife, besides earlier repudiating it to appellee. Appellant published this fact *only once*, but then in subsequent articles continued to omit it while saying that McAdams repudiated his story only after appellee's deputies "seized" him and appellee interrogated him.

(2) Appellant in Exhibit 1 reported that an anonymous informant and two deputy "tipsters" made statements to Johnson about the Reagan case. Publishing these statements tended to strongly substantiate McAdams' story by, among other things, indicating that there were several other eyewitnesses to the beating of Reagan by a deputy.

Exhibit 1 reads in part as follows:

> "Then two days later on Aug. 14 he received a tip from a man who told:
>
> "You haven't even got half of the story. The nut didn't kill that man. A deputy did.
>
> "The tipster gave Johnson the name of the deputy and some advice:
>
> "Don't start nosing around the jail. The (prisoners and deputies) are scared to death. No one dares to talk about it.
>
> "The vital tip came at 1 a.m. Oct. 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14. The deputy provided Johnson with the name of the alleged attacker and with names of other prisoners who saw the attack and were willing to talk. Some had been moved to other penal institutions.
>
> "On Oct. 8 another deputy gave Johnson the names of deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cell block who could have seen the beating."

This article clearly says that as of October 8th, Johnson had been told the name of the alleged attacker, the names of *at least* two prisoner eyewitnesses to the attack, the names of *at least* two deputies who were eyewitnesses to the attack. However, there is sufficient evidence to show that appellant knew when it published that exhibit that it had not been given any such information.

Appellant alleged the August 14th tip came from Deputy

Robert Atwell. At trial Atwell denied telling Johnson anything remotely like the statements attributed to him by Johnson. Atwell said that *after* September 1st, he told Johnson of the rumor that Deputy King might be involved in the Reagan affair. Atwell stated that as far as he was concerned it was an "unbased rumor". This rumor could very well have been due solely to the fact that Johnson himself was telling that story to certain deputies at the jail.

At trial Johnson claimed that the October 7th tip came from Deputy Cottey. This portion of Exhibit 1 clearly says that appellant knew the name of the attacker and the names of other eyewitnesses to the beating besides McAdams. However, Cottey's testimony was that all he ever told Johnson was that a prisoner named McAdams wanted to talk to a newspaper man about something that happened in the jail. Cottey said this conversation took place two or three weeks after September 26th or 27th.

Johnson claimed that the October 8th tip came from Deputy Finney. This part of Exhibit 1 clearly states that the deputy gave Johnson the names of other eyewitnesses to the beating besides McAdams, both deputies and prisoners. Finney testified that late in October he told Johnson, upon request, the names of the deputies who worked the second shift in the jail *as of October*, which included King, Grunden and Ping. The date of July 14th was not mentioned. Appellant stated in its answers to the interrogatories that the deputies named by this tipster, who according to the article were involved in or had first hand knowledge of the beating, included Deputies Grunden and Ping. However, Grunden was not on duty on July 14th, and Ping had not even joined the department on that date. It is interesting to note that Grunden was also mentioned in McAdams original statement. There is sufficient evidence in the record to support a jury finding that the

three deputies did not make the statements attributed to them by appellant and the statements were, therefore, to some extent fabricated by appellant.

We believe the above evidence was sufficient to sustain the jury finding that appellant published the defamations with knowledge of their falsity or reckless disregard of whether they were false or not.

(3) Although the above evidence was sufficient to sustain the jury finding of actual malice, there was a third category of evidence relevant to the issue of appellant's malice and that was the appellee's evidence that prior to the publication of Exhibit 1 appellant and its reporter Rick Johnson harbored ill will and hatred against the appellee. This ill will originally stemmed from appellee's handling of the Hynes case in November, 1964. Prior to that time appellant had evidently approved of appellee's official conduct.

On the evening of November 17, 1964, Lee Hynes' body was found. Three suspects were questioned. One was cleared and he, but not his name was released. At 5:00 a.m., November 18th, the murder weapon was found, and then the other two men were arrested and charged with the murder of Hynes. At this time the arrests and names of the suspects were made known.

Appellant's reporter Johnson was displeased with this because the news was not available for the Indianapolis Star's deadline. He called appellee to complain about this. Appellee told Johnson that to have released the information any sooner would have jeopardized the investigation. Johnson said that was a bad policy and apparently his employers agreed with that assessment.

Johnson then immediately had another disagreement with appellee's policy in releasing news in a case involving two shoplifters. Johnson called appellee and threatened to

put him on the front page of the paper unless appellee "shaped up". The next day appellant published an article stating that appellee had "silenced" his employees. Appellee then banned Johnson from getting any news at the jail. On December 4th and 5th, around midnight Johnson called appellee to complain about the ban and threaten appellee with keeping him on the front page "as long as it takes".

The law librarian in the City-County Building testified that during this period she heard Johnson call appellee a son-of-a-bitch and say "if it took him a year or so, he would get even with him". The prosecutor of Marion County testified that he heard Johnson say "I'm going to get the son-of-a-bitch and he'd better remember what happened to his predecessor." Winston Churchill, a sergeant on the Indianapolis Police Department stated that Johnson told him, "I'll kill the son-of-a-bitch. Politically, I'll kill him." After a so-called reconciliation between Rick Johnson and appellee, Rick Johnson said, "Well, the son-of-a-bitch kissed the book." There was also evidence that appellant's reporters were saying that they were going to put appellee through "journalism school."

In August of 1965, the appellant wrote a series of articles supporting Deputy Charles Haine who was under suspension by appellee for taking a bribe on August 7, 1965. These articles implied that Haine was being framed. Haine was found guilty by the Merit Board on October 20, 1965. The next day Johnson met with McAdams and that meeting soon resulted in McAdams' original story and his release from jail.

Appellant argues that ill will evidence is not admissible because it is not relevant to appellant's actual malice in publishing the alleged accusations against appellee. Appellant cites *New York Times* v. *Sullivan, supra; Garrison* v.

Louisiana, supra; Henry v. *Collins* (1965), 380 U. S. 356, 85 S. Ct. 992, 13 L. Ed. 2d 892; and *Beckley Newspapers Corp.* v. *Hanks* (1967), 389 U. S. 81, 88 S. Ct. 197, 19 L. Ed. 2d 248, in support of its proposition.

None of these cases supports appellant's contention. The question of the admissibility of ill will evidence did not arise in those cases, nor did the United States Supreme Court even discuss the exclusion of such evidence offered on the issue of malice.

Those cases were concerned with the *legal definition* of actual malice. In *New York Times* there was no mention of the concept of ill will evidence at all. In the other three cases the Supreme Court was concerned with the legal standard for determining "reckless disregard" that was to be incorporated in the jury instructions on malice. They held that malice may not be *equated* with ill will and the jury may not be instructed that ill will evidence alone is sufficient to prove malice.

Appellant's argument is that ill will evidence is not *admissible* on the issue of whether appellant published with reckless disregard for the truth. We believe that it is relevant and admissible on that issue. It is true that ill will evidence does not tend to prove that appellant had *knowledge* of the falsity of its publications. However, actual malice may consist in a "high degree of awareness of their probable falsity." *Garrison* v. *Louisiana, supra.*

Appellant's estimate of the probability of falsity of its publications was not derived with mathematical exactness from purely objective factors. It was certainly influenced by various considerations one of which might very well have been appellant's hatred for appellee. Ill will evidence might also tend to prove that appellant published in spite of its estimate of a probability of falsity. We also believe that there is sufficient evidence of appellant's actual malice without even considering the ill will evidence.

(4) There is still more evidence in the record relevant and admissible on the issue of appellant's actual malice. Johnson made no effort to verify McAdams' story in even the obvious easy ways, in spite of the following facts: McAdams was a petty criminal, had an unsavory reputation, and McAdams was obviously making a deal to gain his freedom. Even Johnson's version of the way he and McAdams dealt at their first meeting should have been alarming:

> "A. The first thing that happened was McAdams was placed into Judge Fife's Jury Room with me. We were alone. I introduced myself, told him I had received information from Deputy Cottey that he wanted to talk to me. I said, 'Bud's a good friend of mine;' I said, 'How are you with Bud?' He said 'Bud and I are fine, and I do want to talk to you, *but not until I get out of Jail,' and I said, 'Well, what's it about? Can't you give me an idea?' and he says, 'Not till I get out of Jail,'* so we, more or less (had a) general discussion, what you could call a 'feeling out process,' I suppose, having just met each other. He told me he had worked as a boat builder somewhere in Illinois, had worked on fiber glass boats; that he was a barber by trade; that he had got a bum rap when he was convicted of theft of barber shears, that he hadn't actually stolen, he just forged a name when he hocked them. That was immaterial, so we talked for a few more minutes, I told him that I heard that Deputy Donovan King had beaten an inmate by the name of Reagan, while this man was in solitary confinement, and had then teargassed him and then beat him again, and the man was later taken to the Hospital and ultimately died. I finished repeating that to him, and I said, '*Well, what do you have to say about it?' All he said was, 'That's a pretty good story.' I said, 'You mean you're not going to confirm or deny it?' He said, 'No.' I said, 'Well, will you tell your story to the Judge?' He said, 'Yes, I'll tell it to the Judge.'*

So at that time, I believe I left the Jury Room and went outside to see if Judge Fife was there.

Q. About how long did that meeting take place between you and Mr. McAdams?

A. Well, I didn't keep any record of the time. My best estimate would be no more than thirty minutes, possibly less, because I didn't attempt to keep track of the time.

Q. All right, then what happened when you went to see the Judge?

A. The Judge wasn't in, and it would be some time until he did come in and reconvene Court, according to his Bailiff, Mr. Patterson. I went back into the Jury Room for a few moments and told Mr. McAdams this, asked him if I could bring him a sandwich or some cigarettes. He said, 'No, I'm not hungry, and I've got a smoke,' *and we might have had another conversation at that time regarding what would happen to him if he did talk. He wanted to know if he could get out of Jail,* and I said, 'There are a number of things; there could be probation; time could be cut to time served. There's any number of things that could happen, but that is not up to me. That's up to the Judge, *and it all depends upon what you have to say.*' He made no comment on this. He still wanted to talk to the Judge, and at that time I left him in the Jury Room and I believe Deputy Hall then placed him from there into the lockup.

Q. Did you later that day then, meet with Judge Fife?

A. Yes." (Emphasis added.)

On October 22nd, in the presence of Judge Fife, the coroner and Johnson, McAdams signed a *notarized* statement, *not* a sworn statement under oath. After McAdams left Johnson raised the issue of further verification of McAdams' story but the matter was dropped. If McAdams' story had been true, between seventy (70) to one hundred (100) prisoners would have been able to verify it in some

way, but none did. Appellant was content to print several stories from prisoners and McAdams' girlfriend to the effect that McAdams had told them the story and they believed him. At least one of these prisoners would have been an eyewitness if McAdams' story had been true. Four prisoners on a work crew witnessed Brown attack Reagan and summoned three deputies who shackled Brown to prevent further such attacks, but appellant did not interview them.

Appellant argues that the above evidence is inadmissible because the *New York Times* standard of reckless disregard cannot be satisfied by evidence of failure to investigate. The Supreme Court has not held that evidence of failure to investigate is *never* admissible on the issue of malice. In *St. Amant* v. *Thompson* (1968), 390 U. S. 727, 88 S. Ct. 1323, 20 L. Ed. 2d 262, the Court said:

> "These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice." 390 U. S. at 731.

In certain circumstances evidence of a failure to investigate would be circumstantial evidence relevant to the issue of whether or not the publisher in fact entertained serious doubts as to the truth of the publications. As the Supreme Court also said in *St. Amant*:

> "The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith

> will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." 390 U. S. at 732.

We believe that this evidence was admissible on the issue of reckless disregard.

(D) Appellant claims there was insufficient evidence to show that appellee was damaged by any of the alleged accusations in any of the paragraphs on which appellee recovered. It argues that appellee confuses proof as to the amount of damages with proof as to the fact or cause of damage with respect to the six recovery paragraphs. All of appellee's witnesses testified that the series hurt appellee's reputation, but did not say what it was in the articles that hurt appellee's reputation, nor which articles they referred to. Appellant does not question the amount of damages.

In each legal paragraph appellee alleged his "good reputation was ruined by the publication specified in (rhetorical) paragraph No. 12, resulting in his being held up to public scorn, shame and disgrace, to his damage" in the amount of $51,872.41. Thus, appellee's complaint alleged general damages for injury to his reputation and mental suffering, resulting from the false accusations of crime made by appellant in Exhibits 1 through 44, published in the Indianapolis Star, a daily newspaper which had an average circulation of 225,584 each weekday and 360,742 on Sunday.

Prior to his becoming Sheriff appellee was an attorney, engaged in the private practice of law, an occupation especially dependent upon the practitioner's good reputa-

tion in his community. This is also true of a political office-holder which appellee had become when he was appointed Sheriff.

At the trial appellee put on several witnesses, consisting of attorneys, politicians from both parties, and public officials, from appellee's community, who testified that the series of articles on which the complaint was based, damaged severely appellee's reputation in that community.

The witnesses' testimony certainly was sufficient to support the jury finding that appellee's reputation had been damaged by the series of articles in question. The *fact* of damage was thus established. Other evidence, discussed above was sufficient to support the jury finding that in the six recovery paragraphs appellant intentionally or recklessly published false imputations of crime against appellee. General damages to a person's reputation are presumed to follow from the imputation of crime.

> "Any defamatory imputation may of course be conveyed in libelous form. By the beginning of the nineteenth century it was well established that any libel, as distinct from the same imputation in the form of slander, was actionable without the necessity of pleading or proving that the plaintiff had in fact suffered any damage as a result of it. In other words, the existence of damage was conclusively assumed from the publication of the libel itself, without other evidence that there was any damage at all. The practical result is that the jury may award not only nominal damages, but substantial sums in compensation of the supposed harm to the plaintiff's reputation, without any proof that it has in fact occurred. This is the accepted rule in England, and it is still the law in a small minority of the American jurisdictions.
>
> "The great majority, of some thirty-five other courts, have agreed where the publication is defamatory upon its face. They have disagreed, however,

where extrinsic facts are necessary to make out the defamatory meaning conveyed; and they have held that such libel 'per quod' is to be treated like slander. If the imputation falls into one of the four special slander categories, it is actionable without proof of special damage. If it does not, there can be no recovery unless special damage is pleaded and proved." Prosser, Torts, § 107 (3d ed. 1964).

In this case damages are presumed from the malicious publication under either the majority or minority rule; under the minority rule because it is a *libel* or under the majority rule because it involves one of the four special slander categories, namely, accusation of crime. See the thorough discussion in *Gibson* v. *Kincaid* (1967), Ind. App., 221 N. E. 2d 834 (concurring opinion of Judge Faulconer).

"As in other cases of tort injuries, there are two general classes of compensatory damages allowable for defamation: (1) general damages, or those which the law presumes to be the natural, proximate, and necessary result of the publication; and (2) special damages, or those which, although a natural and probable consequence thereof, are not assumed to be necessary or inevitable, and must be shown by allegation and proof. It has been said that the general damages presumed from the publication of libelous matter, while not susceptible of being accurately measured, are generally more substantial and real than those designated as actual, and measured accurately by the dollar standard." 33 Am. Jur., Libel and Slander, § 200.

"Since the proximate and necessary consequence of a defamatory publication is injury to the feelings, reputation, or business of the person defamed, compensation for such injury is recoverable as general damages." 33 Am. Jur., Libel and Slander, § 204.

The jury was instructed that the damages were to compensate appellee for injury as the proximate result of the

alleged accusations. Certainly, the jury could infer that those accusations caused the damage to appellee's reputation. The jury returned a verdict of $10,000.00 on each of the six paragraphs. We believe there is sufficient evidence to support the jury verdict.

Appellant cites *Linn v. United Plant Guard Workers* (1966), 383 U. S. 53, 86 S. Ct. 657, 15 L. Ed. 2d 582, for the proposition that the First Amendment required that appellee prove that the defamatory statements caused him damage. That case is not applicable here because it was concerned only with alleged libels occurring in the context of a labor dispute within the jurisdiction of the National Labor Relations Board. The court held that National Labor Relations Board jurisdiction over the labor dispute did not pre-empt all state libel actions, but restricted them to cases where the plaintiff proved actual malice and damages. This restriction was intended to minimize conflicts with the National Labor Relations Board while preserving the states' interests in preventing malicious publication of defamatory falsehoods.

II.

Appellant's next contention is that the verdicts are contrary to law because they are inconsistent. The jury returned a verdict for appellee on six paragraphs out of the forty-four (44) in the complaint, Nos. 12, 14, 18, 20, 37, 40, but returned a verdict for appellant on the other thirty-eight (38) paragraphs.

Appellant argues that the evidence on the issues of falsity, malice and damages was identical for all forty-four (44) paragraphs of complaint so the verdicts must be consistent. Appellant also says that appellee's strongest case of libel was to be found in the publications in complaint paragraphs prior to the first recovery paragraph,

but the jury returned verdicts for appellant on those paragraphs.

The Court indulges every reasonable presumption in favor of the legality of jury verdicts. *State Farm Life Ins. Co.* v. *Spidel* (1964), 246 Ind. 458, 202 N. E. 2d 886. Each of the forty-four (44) complaint paragraphs constituted a separate and independent cause of action. It is clear that the evidence was not the same for all of these paragraphs. Each paragraph was based on different publications and the evidence of malice for some of the paragraphs was different from that for others. When jury verdicts on distinct causes of action are challenged as being contrary to law because inconsistent the role of the reviewing court is simply to determine whether there is sufficient evidence to support the verdicts in favor of the appellee. If there is such evidence then those verdicts will be sustained and this Court's inquiry will cease. The fact that appellant could have been hurt worse by more verdicts for appellee is not grounds for throwing out the verdicts actually returned for appellee.

This case is clearly distinguishable from those cases where the verdict is inconsistent because it is a logical or legal impossibility, *e.g.*, an agency situation where the jury found for the sole acting agent while holding the non-acting master liable. In that case the reviewing court does not intrude into the central jury function of determining the facts and reaching the verdict based on that determination. There is no way an appellate court can effectively do that and that is what appellant asks in this case. Appellant concedes that the evidence on all issues on every paragraph is not identical. Therefore, the inconsistency in the jury verdicts does not result from a logical or legal impossibility but from appellant's recommendation as to how the jury should have viewed the evidence.

III.

Appellant contends that the trial court erred in giving certain instructions and refusing certain instructions tendered by appellant.

(A) Appellant says the trial court erred in giving instruction No. 20, which reads as follows:

> "Only those false statements made with the high degree of awareness of their probable falsity may be the subject of civil libel. Even though publications are used as a tool for political ends, does not automatically bring it under the protective mantle of the constitution. The use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be affected. Known falsehoods fall into that class of utterances which are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Hence the knowingly false statement made with reckless disregard of the truth does not enjoy constitutional protection."

Appellant argues that this instruction is not a statement of law relevant to the case but is an argument; it is the "reasoning" in *Garrison* v. *Louisiana*, *supra*, and therefore not suited to be included in a jury instruction; it invades the province of the jury by assuming controverted facts.

We believe it is clear from reading this instruction that it properly states the law as far as it goes. It does not assume any facts nor invade the province of the jury. The fact that the language is based on the *Garrison* case adds support to it and labelling it "reasoning" does not seem relevant to us. All the applicable law cannot and need not

be included in one instruction. *Palmer* v. *Decker* (1970), Ind., 225 N. E. 2d 797; *McClure* v. *Miller* (1951), 229 Ind. 422, 98 N. E. 2d 498; all the instructions must be read together. *State* v. *Coridan* (1943), 221 Ind. 404, 47 N. E. 2d 978. When this is done it is clear that there is no error in this instruction.

(B) Appellant says the trial court erred in giving instruction No. 30 and refusing appellant's tendered instruction No. 7. Number 30 reads as follows:

> "Evidence tending to establish that the defendant harbored ill will toward plaintiff prior to the publications in question may be considered only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not."

Appellant objected to this instruction as follows:

> "The defendant objects to Instruction No. 8 tendered by the plaintiff, for the reason that (1) it is the defendant's position and has been throughout the trial that evidence of ill will is not to be considered by the Jury for any purpose, and the Court has permitted such evidence of ill will to be admitted without restricting its application, and the plaintiff's evidence having consummated almost eight weeks, it would be impossible now for the Court to give any instruction limiting to the application of such evidence of ill will to the issue of reckless disregard."

Appellant's tendered instruction No. 7 would have instructed the jury that ill will evidence was completely irrelevant to this case.

The sole issue raised by appellant's objection and offer of appellant's tendered instruction No. 7 was whether ill will evidence was admissible on the issue of whether appellant published the articles in question with knowledge that they were false or with reckless disregard for their falsity.

We have decided above in section I(C) that it was admissible on that issue and only on that issue. That is precisely what the trial court instructed the jury.

For the first time on appeal appellant attempts to argue that instruction No. 30 is erroneous because it tells the jury that ill will is the same as reckless disregard; because it does not tell the jury that actual malice had to be based on evidence of knowledge of falsity or reckless disregard of truth and not simply on ill will alone; that it is no answer that the jury was properly told in other instructions that actual malice meant publishing with knowledge of falsity or in reckless disregard of the truth.

These issues are not before the Court because they were not raised in the trial court. *Pittman-Rice Coal Co.* v. *Hansen* (1947), 117 Ind. App. 508, 72 N. E. 2d 364.

> "Because petitioner failed to object to this erroneous interpretation of New York Times at trial, and in fact offered instructions which were themselves inadequate, the issue of these instructions is not before us." *Beckley Newspapers Corp.* v. *Hanks, supra,* at p. 82.

We do not review issues presented for the first time on appeal except to avoid grave injustice. *Widmer* v. *Sweeney* (1955), 234 Ind. 263, 124 N. E. 2d 385. We see no such problem here.

(C) Appellant says the trial court erred in giving instruction No. 28, which reads in part as follows:

> "Plaintiff has the burden of proving,
>
> "First that the publications accused plaintiff of the crimes he alleges, to-wit:
>
> "1. Accessory after the fact of murder in connection with two separate incidents.
>
> "2. Malicious prosecution of one man for murder and another for accepting a bribe.

"3. Intimidation of witnesses in connection with two separate incidents.

"4. Aggravated assault and battery in connection with four separate incidents.

"5. Assault and battery with intent to kill in connection with four separate incidents.

"In resolving this issue it is not necessary that plaintiff be so charged by the articles in question in that precise language required in a criminal indictment or affidavit. Each article must be judged when read as a whole by the ordinary reader, taking into account the headlines, emphasis and any light cast upon it by preceding publications if shown by the evidence."

Appellant objected to the last paragraph as follows:

"For the additional reason that there is no evidence that any reader read all of such articles, except evidence entered over objection, or on rebuttal."

The instruction is adequate and this issue is disposed of by the above discussion in Section I(A) concerning the sufficiency of the evidence to show that the publications accused appellee personally of the crimes alleged.

The rest of the instruction is as follows:

"SECOND: That the accusations were false.

"THIRD: That defendant knew said accusations were false or published them with a reckless disregard of truth.

"In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendant's knowledge of falsity or reckless disregard of truth."

Appellant objected to this portion of the instruction as follows:

"The defendants further object to Instruction No.

6 for the reason that the instruction fails to tell the Jury that in this case, where the plaintiff has not based its complaint or defamation on statements contained in the publication, but has elected to base his claim on the ground of certain meanings or innuendos charging him with crime, the burden, the defendants assert, is on the plaintiff to prove that (1) the accusations of crime are implied by statements contained in the publications; that those statements themselves were published with knowledge of falsity or with reckless disregard of the truth or falsity, and that the accusations themselves were false and were known to be false, or probably false, at the time of the publication in question."

However, on appeal appellant's argument is entirely devoted to showing that this instruction is inconsistent with other instructions given. This was not the basis of the objection in the trial court and it cannot be raised for the first time on appeal. *Pittman-Rice Coal Co.* v. *Hansen, supra; Widmer* v. *Sweeney, supra.* We believe the instruction is adequate and does exactly what appellant's objection demands.

(D) Appellant says the trial court erred in giving instruction No. 24, which reads as follows:

"Reckless disregard of truth describes the state of mind of one who *publishes an untruth with such knowledge of existing facts and circumstances refuting such untruth*, as to evince an abandonment of any care for the rights of others and a heedless indifference to the wrongful injury which is likely to result from such publication." (Emphasis added.)

and in giving instruction No. 26, which reads as follows:

"In resolving the issue of reckless disregard of the truth, as same is applicable to their cause, you may give due consideration to the facts you find the defendant knew at the time of any such publication together with all other circumstances such as the reliability

> or lack of reliability of its informants the sources of additional information available to defendant and known, by it, to be available."

and in refusing appellant's tendered instruction No. 9, which reads as follows:

> "In determining whether defendants published any accusation or statement concerning the plaintiff with reckless disregard of whether it was false or not, I instruct you that defendants had no duty to check the accuracy or truthfulness of any accusation or statement before publishing it, whether it was made by a third person or by defendants. The fact, if you find it to be a fact, that defendants may have failed to make some investigation or check some record which plaintiff feels should have been made or checked before publishing such an accusation or statement is completely irrelevant. The question is not whether defendants were negligent or reckless in failing to check the accuracy of what they published. The question is—did defendants at the time have actual knowledge that what they were publishing was false or so probably false that such publishing constituted reckless disregard of their own knowledge concerning the truth."

Appellant's argument is that the jury was erroneously told that the standard by which they were to determine the question of reckless disregard was the negligence standard of whether appellant failed to exercise care to learn facts which were available to it had it conducted an investigation. Appellant cites the *St. Amant* case to the effect that:

> "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of the publication. 390 U. S. at 731.

Clearly, No. 24 does not suffer from this defect. It tells the jury that appellant's knowledge must be of such facts and circumstances existing at the time of publication which refute the falsehood. This seems a legitimate paraphrase of the legal test set out in the last sentence of appellant's tendered instruction No. 9. The last portion of No. 24 does not detract from the first part and does not make due care the standard for determining whether appellant published the articles with actual malice. It merely elaborates on the state of mind of one who knowingly or recklessly publishes a defamatory falsehood.

We believe No. 26 was a proper instruction. We agree with the rule in the *St. Amant* case that to find reckless disregard the evidence must "permit the conclusion that appellant in fact entertained serious doubts as to the truth of the publication." However, this does not tell us what *kind* of evidence may be used to reach that conclusion. Whether appellant in fact entertained such doubts may be proved by circumstantial evidence just as the state of mind of persons in other types of cases may be proved by circumstantial evidence. As was also stated in *St. Amant*:

> "The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt

the veracity of the informant or the accuracy of his reports." 390 U. S. at 372.

We believe that evidence which permits the vital conclusion includes, besides ill will evidence, evidence of the obvious lack of reliability of appellant's sources of information, and evidence of appellant's information as to additional sources available to it. In *Goldwater* v. *Ginzburg* (2d Cir., 1969), 414 F. 2d 324, the court stated:

> "Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports. St. Amant v. Thompson, supra, at 732, 88 S. Ct. 1323.
>
> * * * * *
>
> "As already stated, supra, [New York] Times does not hold that evidence of negligence is inadmissible; it only hold that evidence which merely establishes negligence in failing to discover misstatements, without more, is constitutionally insufficient to support the finding of recklessness required to establish actual malice from proof of less than prudent conduct. . . . To hold otherwise would require that plaintiff prove the ultimate fact of recklessness without being able to adduce proof of the underlying facts from which a jury could infer recklessness. It would limit successful suits to those cases in which there is direct proof by a party's admission of the ultimate fact, certainly a situation not intended by the Supreme Court. See St. Amant v. Thompson." 414 F. 2d at 337, 343.

All the evidence must permit the conclusion that the appellant in fact entertained serious doubts as to the truth of the publication.

Appellant's tendered instruction No. 9 is erroneous and was properly refused. The fact that appellant recklessly failed to check a known *source* may be evidence that it

entertained serious doubts as to the truth of the publication. The trial court instructions do not establish a standard of reasonable care or due care as to the publication of the defamatory falsehoods. The legal definition of "reckless disregard" was given to the jury in several instructions and we see no error here.

IV.

Appellant argues that the trial court erred in admitting several different items of evidence which were incompetent because they were hearsay.

(A) Appellant contends the trial court erred in permitting appellee to read into evidence certain portions of Deputy Cottey's deposition. The introduction of this evidence came about in this way. During cross-examination by appellant, appellee was questioned about certain statements made by Cottey in his deposition. Appellee objected arguing that Cottey was under subpoena by appellant and available to testify. The objection was overruled and appellee answered the questions. Then on redirect appellee read into evidence *other* portions of Cottey's deposition. Appellant objected to that pointing out that Cottey was also under subpoena by appellee and that appellant had not had anyone *read* from Cottey's deposition. That objection was also overruled and it is this ruling that appellant contends was erroneous. This ruling was, of course, proper since *appellant* had opened the door by asking appellee about certain of Cottey's answers on his deposition leaving a misleading impression, and appellee was therefore entitled to read other portions of that deposition. *Appellant* then put into evidence still other portions of Cottey's deposition. Clearly there is no reversible error here.

(B) Appellant argues that appellee's, Deputy Mellene's

and Deputy Robert Atwell's statements concerning the questioning of McAdams on October 26th, constituted hearsay and were inadmissible. These statements were to the effect that McAdams went willingly to the jail to see appellee, that he voluntarily repudiated his story about a deputy beating Reagan, and that Rick Johnson had it in for appellee.

Hearsay evidence has been defined as follows:

> "Hearsay evidence is testimony in court or written evidence, of a statement made out of court, such statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter.
>
> "What strikes one's attention at once about this definition is that it fixes a stringent condition on the popular notion of hearsay as being merely what a witness says he heard someone else say. In truth, that popular notion is quite inadequate as a definition of what is excluded by the hearsay rule." McCormick, Evidence, § 225 (1954).

See also 5 Wigmore, Evidence, §§ 1361, 1362 (3d ed., 1940); *Wayne Works* v. *Hicks Body Co.* (1944), 115 Ind. App. 10, 55 N. E. 2d 382.

If the questioned evidence is hearsay and does not fall within one of the exceptions to that rule, then it is inadmissible in evidence. *Compton* v. *Fleming* (1846), 8 Blackf. 153. The question for this Court then would be whether the erroneous admission of such evidence was harmless error. However, the evidence is inadmissible only if it is really hearsay evidence. Not all testimony about the extra-judicial utterances of a third person made outside the presence of the parties qualifies as hearsay evidence. It depends on the *purpose* for which it is offered.

> "The hearsay rule forbids evidence of assertions to prove the facts asserted in them. Manifestly, proof

of utterances and writing may be made with an almost infinite variety of other purposes, not resting for their value upon the veracity of the out-of-court declarant and hence falling outside the hearsay classification." McCormick, Evidence, § 228 (1954).

Professor Wigmore says:

> "The true nature of the Hearsay rule is nowhere better illustrated and emphasized than in those cases which fall without the scope of its prohibition. The essence of the Hearsay rule is the distinction between the testimonial (or assertive) use of human utterances and their non-testimonial use.
>
> "The theory of the Hearsay rule (*ante*, § 1361) is that, when a human utterance is offered as evidence of the truth of the fact asserted in it, the credit of the assertor becomes the basis of our inference, and therefore the assertion can be received only when made upon the stand, subject to the test of cross-examination. If, therefore, an extra-judicial utterance is offered, not as an assertion to evidence the matter asserted, *but without reference to the truth of the matter asserted*, the Hearsay rule does not apply. The utterance is then merely not obnoxious to that rule. It may or may not be received, according as it has any relevancy in the case; but if it is not received, this is in no way due to the Hearsay rule.
>
> * * * * *
>
> "The prohibition of the Hearsay rule, then, *does not apply to all words or utterances merely as such.* If this fundamental principle is clearly realized, its application is a comparatively simple matter. The Hearsay rule excludes extrajudicial utterances only when offered for a special purpose, namely, *as assertions to evidence the truth of the matter asserted.*" 6 Wigmore, Evidence, § 1766 (3d ed. 1940).

So in this case, if the questioned utterances by third parties which are in the form of assertions, not made under oath or subject to cross-examination by appellant, are

offered to prove the *fact* of the utterances and *not* offered to prove the truth of the facts asserted, then there is no hearsay problem. It is not even a case of being an exception to the hearsay rule, which would imply it was hearsay. It is not hearsay at all.

A corollary of this rule is that only utterances capable of being true or false can possibly fall within the classification of hearsay. True requests, commands, and questions are not assertions and a witness may testify concerning a third party's making such utterances because they are not offered for the truth of the facts asserted.

With these principles in mind we turn to the alleged error.

There was sufficient evidence to support the jury finding that the appellant impliedly accused appellee and his deputies of the crime of intimidating McAdams, a Grand Jury witness, into repudiating his story by twice interviewing McAdams on that date at the jail. Thus, appellant attempted to give legal significance to appellee's and the deputies' actions. An intimidation of a person is a more subtle thing than use of force, and must be determined from the context and the words used by both parties. The utterances of McAdams were not offered for their truth but for the fact that they were made. They were admissible as the "verbal part of an act". Wigmore defines this as follows:

> "A second kind of situation in which utterances are not offered testimonially arises when the utterance *accompanies conduct to which it is desired to attach some legal effect.* The conduct or act has intrinsically no definite significance, or only an ambiguous one, and its whole legal purport or tenor is to be more precisely ascertained by considering the words accompanying it. The utterance thus enters merely as a verbal part of the act, or, in the common phrase, a 'verbal act.'

"Perhaps most of our acts to which legal effect is to be attached in creating, transferring, modifying, or extinguishing rights, consist in part of words. . . . Without the words, the act as a whole may be incomplete; and, until the words are taken into consideration, the desired significance cannot be attributed to the wordless conduct.

"Thus the words are used in no sense testimonially, *i.e.* as assertions to evidence the truth of a fact asserted in them. On the one hand, therefore, the Hearsay rule interposes no objection to the use of such utterances, because they are not offered as assertions (*ante*, § 1766). On the other hand, so far as they may contain assertions, these are not to be used or argued about testimonially, nor believe by the jury; for this would be to use them in violation of the Hearsay rule. In short, the utterances enter *irrespective of the truth of any assertion they may contain;* and they neither profit nor suffer by virtue thereof.

"These considerations point out the four simple limitations which attend this use of utterances as verbal acts; namely:

"(1) The conduct to be characterized by the words must be *independently material to the issue;*

"(2) The conduct must be *equivocal;*

"(3) The words must aid in *giving legal significance to the conduct;*

"(4) The words must *accompany the conduct.*" 6 Wigmore, Evidence, § 1772 (3d ed. 1940).

See also McCormick, Evidence, *supra.*

The conduct involved here was independently material to the issue of the falsity of appellant's accusation against appellee that appellee intimidated a Grand Jury witness. The conduct by itself was equivocal. The deputies asked McAdams to go to the jail to be interviewed and he was permitted to drive his own car. He repudiated his story and he left. Was he intimidated through fear to rescind a true story or did he merely repudiate a lie? The words

are of vital importance in determining that issue and giving legal significance to the conduct. The words obviously accompanied the conduct. All four of Wigmore's tests are satisfied in this case.

Appellee's and his deputies' testimony concerning McAdams' statements are also admissible as circumstantial evidence of McAdams' state of mind at the time, namely, whether he was in a state of fear. On this point Wigmore says:

> "The condition of a speaker's mind, as to knowledge, belief, rationality, emotion, or the like, may be evidenced by his utterances, either used testimonially as assertions to be believed, or used circumstantially as affording indirect inferences. . . . The usual resort is to utterances which circumstantially indicate a specific state of mind causing them.
>
> "To such a use, then, the Hearsay rule makes no opposition, because the utterance is not used for the sake of inducing belief in any assertion it may contain. The assertion, if in form there is one, is to be disregarded, and the indirect inference alone regarded. This discrimination, though well accepted in the law, is easy to be ignored, and it needs perhaps to be emphasized." 6 Wigmore, Evidence, § 1790 (3d ed. 1940).

See also McCormick, Evidence, *supra*.

It is not decisive that the statements could also have a testimonial use.

> "Here, then, J. S.'s utterance has two possible uses,—its testimonial and its circumstantial use; so far as the former is concerned, the Hearsay rule applies, but to the latter the Hearsay rule has no application. Again, in evidencing sanity or insanity, a testator's statement, 'I am the King of Dahomey', or 'I have a million dollars in the bank', may be treated either testimonially or circumstantially; so far as it is offered circumstantially, as indicating a delusion in the testa-

> tor's mind, it is not obnoxious to the Hearsay rule. It is immaterial whether or not, in the case in hand, the assertive or testimonial use might be improperly made by the jury; the judge's instructions are the corrective against this. On the principle of Multiple Admissibility (*ante*, § 13), if there is *any* relevant circumstantial use, the utterance is admissible for that purpose." 6 Wigmore, Evidence, § 1790 (3d ed. 1940).

See also McCormick, *supra*.

What McAdams said, treated as a factual occurrence which was circumstantial evidence of his state of mind was relevant to the charge of intimidation against appellee, and appellee and the deputies were eye-witnesses to that occurrence. Appellee and the deputies had a perfect right to describe what they did, said, saw and heard during the interview with McAdams in order to refute the charge of intimidation. There is no hearsay problem here because McAdams' statements were not offered for the truth of the facts they asserted.

If any items of evidence were relevant and admissible for one purpose and not for another, there was no error in their admission. In *State* v. *Vaughn* (1962), 243 Ind. 221, 184 N. E. 2d 143, we held:

> "The evidence admitted was not objectionable for the reason stated. It is not error to admit evidence if it is relevant material and competent for any use. If the use for which the evidence is admissible is limited, the burden is on the opposing party to ascertain that the evidence is considered by the trier of the facts for such limited purpose only." 243 Ind. at 227.

See also 6 Wigmore, Evidence, *supra*.

Appellant did not request such an instruction in this case.

(C) Another item of evidence that appellant claims was inadmissible hearsay was Deputy Cottey's affidavit.

This affidavit was not offered for the truth of the asser-

tions therein but as circumstantial evidence to refute appellant's repeated claim that appellee did not investigate the charge of jail irregularities. (See discussion above in B.) The fact that the affidavit was taken several months after the beating on July 14th is not relevant. When Cottey left on vacation on Oct. 20, appellee did not even know of Cottey's alleged involvement in the case. While on vacation Cottey became ill and did not return to work for some time, the exact date not being clear to us. The lapse of time between his availability to be interviewed and the taking of the affidavit might have diminished the *relevance* of the affidavit but it could not convert it into hearsay. It was not objected to as being irrelevant, nor was a limiting instruction sought by appellant. *State* v. *Vaughn, supra.*

In any event the evidence in this affidavit was the same as that presented through appellee's reading of certain portions of Cottey's deposition and was therefore merely cumulative. Even *if* it was erroneously admitted it was harmless error. *Bankers Surety Co.* v. *German Investment & Securities Co.* (1920), 189 Ind. 311, 126 N. E. 6.

(D) Appellant claims another example of inadmissible hearsay was plaintiff's Exhibit 237 T, a transcript of McAdams' guilty plea on August 26, 1965, where McAdams, after he supposedly witnessed the beating of Reagan, requested to serve his time in the Marion County Jail. This is not an example of hearsay. McAdams' *request* for something is not a declaration or assertion which can be true or false. It cannot be offered for the truth of what it asserts because it asserts nothing, nor attempts to. It is a different type of utterance altogether. The fact that McAdams made such a request is admissible to show McAdams' state of mind at that hearing and that he had no fear of being in the Marion County Jail. (See the discussion above under B.)

(E) Appellant claims plaintiff's Exhibit 282 A, a letter from appellee to the Superintendent of General Hospital, dated March 25, 1964, was inadmissible hearsay.

One of the main charges appellant made in its series of articles was the existence of brutality and neglect of sick prisoners in the jail supervised by appellee. Appellee introduced the exhibit as an *act* which showed his concern for such prisoners. The letter was not hearsay because it was not offered for the truth of the assertion made therein, but for the fact that it was written at all. (See discussion above in B.)

Even if it were inadmissible, this letter merely discussed the problems of medical attention for the prisoners and we fail to see how it could conceivably constitute reversible error.

We repeat that this trial lasted from April 18th, until June 14, 1967. There were ninety-six (96) witnesses and the trial court admitted six hundred sixty-four (664) separate items of evidence. We believe the trial court did a good job of dealing with this avalanche of evidence and do not see how this letter could have made any difference either way.

(F) Appellant contends that it was error to admit the testimony of appellee as to what his former law partner Ed Lewis had told him that appellant's reporter Rick Johnson had said in a conversation between Lewis and Johnson at which appellee was not present.

Both Lewis and Johnson testified to that same conversation. Appellant does not point out how appellee's testifying to that conversation could be prejudicial to appellant; nor does appellant set out what appellant's testimony even was on this point. The trial court committed no error here.

Appellant implies that there are many more examples of

erroneous admissions of hearsay evidence, however, it does not argue them and they are not before us on this appeal.

I vote to affirm this judgment. Jackson, J. is of the opinion that the judgment of the trial court should be affirmed and concurs in this opinion.

Appendix (to Affirming Opinion).

Chronology.

July 14, 1965—Beating of Reagan by George Brown, a fellow prisoner; admitted to hospital 5:09 p.m.

August 5, 1965—Charges against Reagan dismissed.

August 7, 1965—Death of Reagan.

August 8, 1965—Autopsy on Reagan.

August 10, 1965—Indianapolis Times story that fight injuries caused death of Reagan.

August 11, 1965—Preliminary autopsy report; Appellant's reporter, Rick Johnson, inquired at jail about Reagan case; Deputy Haine, who had been assigned investigation of Reagan case was fired for accepting a bribe.

August 12, 1965—Sgt. Mellene takes over Reagan case; Times reported Brown in hospital; Indianapolis Star claimed it had bared the Reagan beating.

August 13, 1965—Sheriff filed charges against Brown.

August 26, 1965—McAdams plead guilty to theft and was sentenced to six months imprisonment; McAdams ask to go to county jail.

October 18, 1965—Start of Haine Merit Board Hearing.

October 20, 1965—Close of Haine Hearing and he was found guilty and fired.

October 21, 1965—Rick Johnson first met McAdams and took him to Judge Fife to give a statement.

October 22, 1965—McAdams signed an unsworn statement in presence of Judge Fife and the Coroner.

October 25, 1965—Fife amended McAdams' commitment to time served and McAdams was released.

October 26, 1965—McAdams questioned by Grand Jury and by appellee; McAdams repudiated his story.

October 27, 1965—Series upon which appellee's complaint was based was started; Exhibit 1.

October 28, 1965—McAdams repudiates his story in open court before Judge Fife; Fife sent McAdams back to jail; McAdams testified again before the Grand Jury.

November 5, 1965—Rick Johnson obtained information that hospital records showed Reagan admitted at 5:09 p.m. July 14th; inconsistent with McAdams' story.

November 6, 1965—Appellant's editors were informed of contradiction of McAdams' statement.

November 7, 1965—Appellee's first recovery paragraph, complaint paragraph No. 12.

November 8, 1965—Appellee served first notice to retract on corporate appellant; refused.

November 9, 1965—Appellee's second recovery paragraph, complaint paragraph No. 14.

November 12, 1965—Appellee filed suit alleging meanings specified in November 8th notice.

November 13, 1965—Appellee's third recovery paragraph, complaint paragraph No. 18.

November 15, 1965—Appellee's fourth recovery paragraph, complaint paragraph No. 20.

November 23, 1965—Grand Jury report said McAdams' story false and returned indictment of Brown for Second Degree Murder; exonerated Sheriff's Dept. of charges of brutality.

December 3, 1965—Appellee's fifth recovery paragraph, complaint paragraph No. 37.

December 18, 1965—Appellee's last recovery paragraph, complaint paragraph No. 40.

January 5, 1966—Notice to retract in form of unfiled complaint.

January 10, 1966—Complaint filed.

March 24, 1966—Jury in Brown case found that Brown attacked Reagan but was not guilty by reason of insanity.

Exhibit 2, p. 1:

"BEATING WITNESS VANISHES"

"The key witness in the investigation of the fatal beating of a Marion County Jail inmate disappeared suddenly yesterday after he was seized twice by sheriff's deputies and interrogated by Sheriff Robert H. Fields."

"Fields said he received a repudiation of the missing man's signed statement that a jail deputy was responsible for the beating, after his deputies grabbed the man and brought him to the sheriff's department before and after he testified before the Grand Jury."

"The witness, Charles McAdams, 35 years old, said, however, after the meetings in the sheriff's office that he gave no statement."

"McAdams charged in the notarized statement Tuesday that the beating victim, Elmer L. Reagan, 50 years old, who died Aug. 7, had been attacked several times by the deputy, although the beating which led to his death by pneumonia had been blamed on a metal patient."

"Reagan was beaten July 14, according to the prisoner, and the mental patient, William A. Brown, was arrested on a second-degree murder charge after sheriff's investigators stated Brown beat Reagan when they were locked in the same cell."

"McAdams was picked up by sheriff's investigators Tuesday before and after he testified before the grand jury, and released after the Indianapolis Star learned he was being held."

"He later told The Star deputies stopped him at 4 p.m. and threatened to arrest him if he refused to accompany them downtown. He said he was allowed to drive his own car while deputies followed."

"'They hammered me hard with questions for about an hour and then took me over to the grand jury and I testified,' he said. 'When I walked out Deputy Jim Mellene took me back to the jail and I had a long talk with the sheriff and then they took me back and questioned me some more.'"

"He said he was 'scared to death and nearly sick' and before he was released 'one of the deputies pulled a bottle of whiskey out of a drawer and said I could have it.'"

"It was during the interrogation that McAdams repudiated his statement, Fields said."

"McAdams agreed to meet with Pearcy yesterday to take a polygraph (lie detector) test but failed to appear and could not be located."

* * * * * * *

Exhibit 2, p. 3:

"'LET'S HAVE ANSWERS, ACTION!

"Nothing but the truth can chase away the giant question mark that hangs today over the Marion County Sheriff's Department—or turn it into a blistering and scandalous indictment.

"Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history.

"Suspicion is unavoidable. These charges made by a former prisoner climax a series of irregularities which the sheriff's office has covered up. The past

irregularities were brought to light only after long, hard digging by The Star.

"The newest allegations add up to a sinister story.

"They were made by a former jail inmate who testified Tuesday before the Marion County Grand Jury. He said that a deputy sheriff kicked and beat Elmer L. Reagan, a 50-year-old inmate being held in jail on a drunkenness charge, on July 14. By the witness's account, the attack was vicious and sadistic. He said the deputy became enraged when Reagan called him a name after asking for medicine."

"Reagan was taken from the jail to Marion County General Hospital with 12 broken ribs and internal injuries. He died Aug. 7 as a result of pneumonia caused by the injuries, the coroner's office reported.

"Both the fact that he had been beaten and that he had died were conveniently ignored by the sheriff's office. Only after The Star, upon receiving a tip, investigated, were these facts brought to light.

"Then the sheriff's office came up with the first version of the case, claiming Reagan had been locked in a cell with a 24-year-old mental patient, who had inflicted the fatal beating. This procedure—confining two such inmates in the same cell—in itself seemed highly irregular, as we commented at the time. A sheriff's investigator then charged the mental patient with Reagan's murder, and the charge is still pending.

"Now the most serious doubt is cast upon this version of the fatal beating.

"An 11-week investigation by Star Reporter Rick Johnson, based upon a tip from the former prisoner who said he knew what really had happened, led to the ex-inmate's appearance before the grand jury.

"The witness later made another potentially damning accusation, claiming that sheriff's deputies had tried to intimidate him both before and after his grand jury appearance.

"This specific charge deserves stern investigation, as to its truth or falsity, for it brings up this question: If the deputies did try to intimidate him, does this not lend credence to the witness's story of the beating?

Sheriff Robert H. Fields says he has obtained a retraction of the witness's original account of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What persuaded the witness to change his story? Only a thorough, incisive investigation is going to answer the questions that must be answered.

Prosecutor Noble F. Pearcy has said that subpoenas will be issued for all persons, including four deputies and several prisoners, named in the witness's statement. Some of these witnesses are out of town and it may be a matter of days before they can be brought here to testify.

Meanwhile, Sheriff Fields should waste no time in taking steps to improve jail internal security so that violent and ugly episodes such as the Reagan beating are impossible. This may require personnel changes or both. But they should be made.

Both the investigation of the witness's charges, Indianapolis and Marion County are waiting for the answers that the community will settle for nothing less than the truth.

ME MORE QUESTIONS"

It seems odd to us that Prosecutor Noble Pearcy sees nothing wrong in the fact that deputies from the sheriff's office and the sheriff himself should call a state witness, who had appeared before the grand jury for interrogation, and get a retraction of his grand jury testimony from him.

After all, it is the sheriff's office that is accused of wrongdoing. If every accused wrongdoer had the opportunity to interrogate his accuser as was done in this case, you sure wouldn't have many willing grand jury witnesses for any case. It is, to say the least, irregular to permit the accused to cross examine

the accuser outside of the court, particularly when he has the power of the sheriff's office behind him.

"Another question: If the sheriff and his deputies had nothing to fear from a grand jury investigation, if they know that they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence?

"It make you wonder, doesn't it?"

Exhibit 7, p. 1:

"Protection for witnesses who testify before the Marion County Grand Jury in the steamrolling investigation of brutality at the Marion County Jail was promised by a second Criminal Court judge yesterday."

"Judge Saul I. Rabb of Criminal Court, Division 2, joined Judge Eugene M. Fife, Jr. of Division 1 in offering protection for jury witnesses."

"Rabb and Fife said all persons who testify would become 'continuing witnesses' and thereby placed under the protection of both criminal courts and the grand jury."

"Fife ordered last week that jury witnesses were not to be bothered or questioned before or after their testimony, and questioning of any witnesses by sheriff's personnel was to be done in his presence."

"Rabb concurred with Fife and added that questioning of witnesses outside the jury room would take place only while he was present or in the presence of his court reporter."

"Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted."

"The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared before the grand jury."

"The witness, Charles P. McAdams, 35 years old, had signed a notarized statement accusing a sheriff's sergeant of the fatal beating of an inmate, but, according to Fields, repudiated the statement during the questioning by Fields and deputies."

* * * * * *

Exhibit 11, p. 1:

"EX-CELLMATE BACKS BEATING REPORT"

"Supports McAdams' 1st Story"

Exhibit 12, p. 1:

"Comparison of a Marion County Sheriff's Department report on the death of a jail inmate and hospital records has posed a puzzle for the grand jury probing brutality at the jail."

"Spotlighted is one big question: How could a mental patient, shackled to bars, inflict mortal injuries on another prisoner?"

"Elmer L. Reagan died Aug. 7 of pneumonia, induced by a severe beating, after being admitted to Marion County General Hospital, July 14."

"The mental patient, William A. Brown, was charged with second degree murder."

"Brown was admitted to Marion County General Hospital on Aug. 2 and records there show conclusively that his arms and legs bore distinct marks of shackles and handcuffs, according to investigators. It was evident he had been in constant restraint for some time, they said."

* * * * * *

Exhibit 12, p. 2:

"But the pitiful—and portentous—death Aug. 7 of the jail inmate, Elmer L. Reagan, 50 years old, was unreported until The Indianapolis Star learned of it five days later. Cause of his death was pneumonia, brought on by the smashing of his ribs."

"A mental patient chained in the same cell which Reagan had occupied was charged with second-degree murder in the beating which supposedly led to the victim's death."

"The grand jury was given the case against the mental patient, William A. Brown."

"AND THAT was that.

But on Oct. 25, Charles P. McAdams, 35 a barber in jail on a charge of stealing barbering shears at the time Reagan was jailed, charged in a notarized statement that Reagan actually was attacked July 14 by an angry deputy sheriff."

"After McAdams' charge was brought to light by The Star, the jury's investigation into Reagan's death suddenly broadened."

"McAdams testified Oct. 26 before the grand jury. Sheriff's deputies took him in custody twice that day —before and after his jury appearance. He reported that deputies sought a statement from him and refused to give it."

"Then he disappeared.

The following day, Sheriff Robert H. Fields, under whose jurisdiction the jail is run, declared the missing man had repudiated his statement."

"But a day later, on Oct. 28, the girl friend of McAdams declared that McAdams, who had told her of Reagan's beating, was 'brainwashed' by the deputies who gave him whisky."

"'He sold out," declared Mrs. Lura Kimbley, 52, Danville, Ill. 'He sold out,' she repeated."

"Later, she told Judge Eugene M. Fife Jr. of Criminal Court, Division 1, that she was sure McAdams told the truth in his orginal statement. A parollee also came forward to say he heard McAdams discussing the death in the jail."

"Friday, a former jail cellmate of McAdams added further corroboration to McAdams' original statement. He said McAdams told him of witnessing the beating of Reagan."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 621

INDIANAPOLIS NEWSPAPERS, INC.,
Petitioner

vs.

ROBERT H. FIELDS,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION.

BRUNNER, BROWN & BRUNNER
416 South Harrison Street
Shelbyville, Indiana 46176
Telephone: 317-636-0330

ELMON M. WILLIAMS
U. S. Highway 31 N & Meadows Drive
Greenwood, Indiana 46142
Telephone: 317-881-8284

ANDREW JACOBS, SR.
1503 North Pennsylvania Street, #13
Indianapolis, Indiana 46202
Telephone: 317-636-6044

Attorneys for Respondent.

C. E. Pauley & Co., Inc., Indianapolis

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OCTOBER TERM, 1970

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INDIANAPOLIS NEWSPAPERS, INC.,
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vs.

ROBERT H. FIELDS,
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BRIEF FOR RESPONDENT IN OPPOSITION.

(A) QUESTIONS PRESENTED.

Petitioner's "Statement of Questions Presented" (Pet. pp. 2-5), and its "Statement of the Case," (Pet. pp. 6-8) misrepresent the record and hence distort the questions deserving consideration upon its petition.

Respondent submits that, in the context of the record, the questions petitioner raise are:

1. Was the evidence sufficient to warrant the jury's verdict:

(a) That the publications conveyed the alleged meanings, to-wit: That Respondent was guilty of (i) accessory after the fact to the murder of Elmer Reagan by (ii) in-

timidating an eye witness (McAdams), to, and (iii) maliciously prosecuting an innocent man (William Brown) for, that murder?

(b) That petitioner published these accusations with knowledge, or with reckless disregard, of their falsity? Petitioner's "Clear and Convincing Evidence" question raised as its No. 3 is related to this question, hence will be discussed, below, along with this question.

2. Was it a violation of Petitioner's constitutional rights to admit evidence:

(a) That, prior to the publications, Petitioner threatened to destroy Respondent, under instruction to consider such evidence, "*only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not*"? (P. Sep. App. p. A 221);[1]

(b) Of the falsity of the publications, without proof of petitioner's pre-publication knowledge of such evidence, under instruction, "*Plaintiff has the burden of proving . . . Second: That the accusations were false. Third: That the defendant knew said accusations were false or published them with reckless disregard of truth.*

(1) Code of references. -2-

Pet.	= The petition.
R.	= Official Record. Additional page references following the official page number refers to the pages of a multiple paged exhibit having but one official page number assigned to it.
P. App.	= Petitioner's Appendix.
P. Sep. App.	= Petitioner's Separate Appendix.
R. App.	= Respondent's Appendix.

"In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendants' knowledge of falsity or reckless disregard of truth" (P. Sep. App. A 219, 20).

(B)

COMMENT ON PETITIONER'S "STATEMENT OF THE CASE"

Petitioner here asserts broad conclusions, regarding collateral facts, all of which were rejected by the jury upon overwhelming, or uncontradicted, evidence, mostly the latter, and ignores the salient facts. It disclosed virtually none of the facts upon which respondent relied and which warranted the verdicts and judgment.

(C)

SUMMARY OF ARGUMENT

Petitioner (orally) threatened Respondent, e.g., "to kill the son-of-a-bitch politically" and "put him through journalism school," and (published) "he is shooting for real trouble," but that it could "make him look good in the public's eye" if Respondent would yield and report to it names of suspects and the objectives being pursued in major investigations. Petitioner refused, so as to protect later cleared suspects and preclude at-large confederates from destroying evidence. Both these considerations were present in the gang murder then under investigation and over which the controversy came to a head. For the ensuing 8 months, Petitioner accused Respondent of concealing

official conduct. On the eve of the libel articles, Petitioner was asserting, "We are going to put him through journalism school."

Petitioner then related to a convicted thief, *(who had 4 months to serve)*, that it had heard that a Sergeant killed an inmate; took the thief into the chambers of a judge *(who had not sentenced him)* and, made a promise *(later kept)* to get him released if he'd confirm the accusation, commenting *(in the criminal's presence)* to the judge *(who had neglected to pay State and Federal taxes for 10 years, and who was up for re-election)* that with such a statement, they could get rid of Respondent as Sheriff. By these means, the false accusation was procured from the convict.

Although overwhelming evidence *(known to Petitioner at that time)* branded the accusation false, in the face of which the criminal soon confessed, *FIRST*, to Respondent, *SECOND*, to the same judge in open court, and *THIRD*, to the Grand Jury, Petitioner persisted for two months in accusing Respondent of (i) accessory to the murder by (ii) intimidating the criminal, and (iii) prosecuting the inmate who did (later convicted) kill the deceased inmate.

The judge refused to hear the evidence of falsity at the time the criminal confessed. Petitioner banner headlined that this judge would protect "come forth" ex-inmates, who would denounce Respondent.[1] Some did, and Respondent identified each incident and proved what did or did not occur. These accusations were employed to support the original accusation. Before the first recovery publication, Petitioner learned of conclusive evidence the criminal

[1] Two ex-inmates said that, during the 2 years of Respondent's incumbency as sheriff, they had been, twice in the case of one, and 6 or 7 times in the case of the other, in jail and had seen no brutality. The reporter incorporated these statements in his manuscript and his superiors removed same from the published reports.

had lied. But it persisted in 32 further accusatory publications.

Petitioner planned to visit Grand Jurors in their homes, during its investigation, and later attempted to intimidate them by a cartoon threatening them with adverse publicity. When, after hearing 129 witnesses, the Grand Jury found the accusation false, Petitioner denounced it as a "whitewash" and, when the Jurors were under assassination threats, Petitioner published their names, addresses and photographs on page 1.

During the investigation, Petitioner offered to lay off of Respondent if he'd yield to its demands else it would publish other false accusations, and when Respondent refused, it so published, which were promptly proven false.

In the long and prolific series, Petitioner created code words, phrases and paragraphs, which enabled it to keep the accusations clear to the public in shorter articles. Petitioner later published a boast that it had destroyed Respondent, as it had threatened.

Petitioner ignored Respondent's pre-suit offer to give it the conclusive evidence of falsity which, at the trial, stood uncontradicted.

The pattern of the jury's 6 verdicts indicate it gave great weight to the 7 knowledge or reckless disregard, etc. instructions, following strictly this Court's holdings.

LAW ARGUMENT.

Petitioner urged, below, that it *"had a constitutional right to defame"* Respondent and that *its knowledge, or recklessness, could only be proven by its own admission.* It also contended that its *threats were inadmissible and proof of the truth of its many publications was hearsay.*

Overruled on these points of law, the trial resulted in 6 verdicts ($10,000.00 each) and Petitioner now raises these questions here.

(D)

RESPONDENT'S STATEMENT OF THE CASE

(i) The salient facts.

1 Hynes murder case and Respondent's disobedience

November 1, 1964 Petitioner was angered, because Respondent had *failed to report to it* regarding a successful overnight investigation of the murder of Lee Hynes, a Mobley Mobster (R. pp. 6241, 2) supposedly for tipping County Police (Deputies) to the mob's hideout when recaptured after a jail break and a robbery (R. pp. 2596 & 4818). Petitioner's reporter (Johnson), in 3 midnight calls to Respondent's home, cursed and ordered him, "*By God, you'd better shape up*" else Petitioner would (which it did) "*keep you on the front page as long as it takes.*" (R. App. pp. 1a-3a) Petitioner then published that Respondent "*is shooting for real trouble*" stating, however, in concluding the same article, that it could "*make him look good in the public's eye*" if he'd report to it. (R. App. p. 4a)

Simultaneously Johnson asserted to numerous persons that he'd "*kill (or get) the son-of-a-bitch, politically, if it takes a year.*" (R. App. p. 5a-6a) and "*he'd better remember what happened to his predecessor,*" who died of ulcers (R. App. p. 4a-5a) and who had been attacked by Petitioner for firing a deputy who was caught patronizing a bawdy-house (R. App. p. 5a). Petitioner's City Editor, Lawrence Connor backed Johnson when Respondent told him these facts (R. App. p. 5a) and Petitioner began pub-

lishing charges that Respondent was concealing his official operations. (R. pp. 4141).[1] These charges continued from mid-December, 1964, on into the libel articles (R. p. 48, first paragraph; p. Sep. App. p. A17). The same theme was interlarded into most of them from October 27th to December 28, 1965. (P. Sep. App. pp. A1 to 172).

On the eve of the libel articles (August-October, 1965), two of Petitioner's reporters were asserting, "*We're going to put him through journalism school.*" (R. pp. 3997,8).

2. Petitioner's defense of Sgt. Chas. Haine.

Beginning August 11th, 1965, Petitioner was devoting its columns to the defense of Sheriff's Sgt. Charles Haine. (R. p. 2513; 2535; 2539; 2540; 2543 through 2560, and 6275), whom Respondent (acting on a State Police tip) (R. p. 6267,9), personally caught, in the act, taking a $200 bribe from another Mobley Mobster (Leon Johnson). (R. p. 6269, 73).

Subsequent investigation disclosed Haine had taken another $200 bribe from Florence DaGrossa (R. pp. 3028, 30) (via registered mail from Brooklyn, New York), (R. pp. 3226, 7), sent to Haine's home, on behalf of her armed robber son (Robert Squillan) (R. pp. 3291, pp. 2 and 23), to induce Haine to recommend a suspended sentence to Judge Eugene M. Fife, which he successfully did (R. pp. 3291, pp. 8, 10 & 35); also, that he stole $256 from another mobster (Schriver) while transporting him from Wisconsin on extradition. (R. pp. 7260, 8 and 2573).

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[1] In January 1966 Respondent thought he and Johnson had reconciled their differences, however, Johnson viewed the agreement differently. (R.App.p. 7a)

3. Admits Haine evidence overwhelming, but defense continues.

City Editor Connor admitted, but never published, that the evidence was overwhelming (R. pp. 5858, 9). October 22, 1965, after a 3-day trial (October 18, 19 & 20, 1965), the Sheriff's Merit Board ordered Haine discharged (R. pp. 2559, 60).[1] However, Petitioner resumed its defense of Haine on November 3rd, continuing on the 4th, 11th, 12th, 23rd, 26th, December 1st and 28th. (R. pp. 57, 59, 68, 70, 81, 86 & 100).

Petitioner's defense of Haine took the form of (1) attempting to prevent Leon Johnson from testifying against Haine by either intimidating, or inducing his gang murder, by publishing, front page, that it was Leon Johnson, not Lee Hynes, who tipped the police to the mob's hideout, concluding, "*They killed the wrong man.*" (R. App. p. 8a). (2) By this own admission, Johnson asked Mrs. Dagrossa to change her story that that the $200 was sent Haine because Haine "had been so good to her and her son" to, that she sent it for "transportation cost and clothing" (R. pp. 3000, 1; 3005), and petitioner published that she agreed to so swear (R. p. 2546). Mrs. Dagrossa swore she did not so say, nor agree to so swear, that the $200 was to induce Haine to recommend the suspended sentence (R. pp. 3291, p. 10). Squillan's trial came up in March, (R. p. 3291; p. 35) after Haine received the $200 in January (R. pp. 3226, 7), then assuring he could successfully procure the suspension from Criminal Court Judge Eugene M. Fife (R. p. 3028), which he did; (3) in-

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[1] Respondent had no "deputies," though so-called from usage. By statute *(Burns Indiana Statutes 49-2814,26)* they were "Members of the Marion County Police Force."

The Merit Board made all appointments and discharges. Respondent, as ex-officio Director of the "Force" was restricted to 15-day suspensions (Burns 49-2816) in disciplinary cases.

terviewing Schriver in prison and reporting a statement falsely favorable to Haine (R. p. 2549); (4) reporting Schriver's Merit Board testimony diametrically opposite to what he swore, but as it had reported the interview (R. pp. 7260, 5), and (5) editorially proclaiming that Haine was framed and that Respondent, not Haine, had something to explain (R. App. p. 8a).

4. McAdams follows immediately after Haine.

October 21st, the day following the Merit Board trial, Reporter Johnson arranged with Judge Fife to interview McAdams in one of the court's office rooms.

McAdams had served almost 2 of a 6-months' theft sentence in Jail (R. pp. 6168; 6169). McAdams specifically requested jail, instead of the State Farm, after pro-tem Judge Carson (not Judge Fife) had sentenced him to the Farm (R. p. 6168).

5. McAdams tells what Johnson said he had heard, and goes free.

Johnson told McAdams he had heard Sgt. Donovan King had beaten and killed inmate Elmer Reagan (a 50-year old alcoholic derelict, broken in body and mind). Johnson asked for confirmation, McAdams replying, "That's a pretty good story," but that "he wouldn't talk until he got out of jail." Johnson asked if he would talk to the Judge and McAdams assented, asking if Johnson thought he could get out of jail. Johnson said, after reciting how the Judge could release him, *"That's up to the judge, and it all depends upon what you have to say."* (R. App. pp. 9a-12a).

As he and McAdams entered the Judge's chambers, John said, *"I think he's got a murder,"* (R. App. pp. 11a

12a). Then McAdams confirmed Johnson's story, embellishing it with some details of an altercation between Sgt. King and a younger prisoner (Bryant). Then he related the Bryant incident, omitting the borrowed details (R. pp. 3811 & 2595).

Johnson said to Judge Fife that if McAdams signed such a statement and "it was brushed under the rug, *'it could only lead to having a new Sheriff.*" (R. p. 7324, 5 see R. App. p. 12a).

McAdams signed the accusatory statement the next day (Friday, October 22nd, in a room of Judge Fife's court (R. p. 7325). Johnson suggested McAdams' release to Judge Fife, who said he would *"tend to that"* and Johnson left assured (R. p. 7184).

McAdams, 35, had been a practicing criminal since he was a teenager (R. pp. 3966, 7 and 6161 to 6217), and Johnson knew it (R. p. 7180).

Monday, October 25th, Johnson reminded Judge Fife, who said he'd forgotten and McAdams was shortly released by Judge Fife, purporting to reduce his sentence to time served, unbeknown to the Prosecutor, or any law officer (R. p. 7185, 6) We say "purporting" because this violated Indiana law, even if Judge Fife had been the sentencing judge:

> *"Providing, that the court may not suspend the execution of sentence after the defendant shall have commenced to serve his sentence of imprisonment." (Burns Indiana Statutes 9-2209).*

And in any direct action to vacate a sentence, the prosecuting attorney must be notified. *State ex rel Powers vs Vigo Cir. Ct. et al. (1956) 236 Ind. 408, at p. 413.*

The same day. (October 25th), Johnson told Deputy Prosecutor New that he had some *"major irregularities"*

"which involved Mr. Pearcy (the Prosecuting Attorney) . . . and . . . the Sheriff and the jail staff and that it was a bomb . . .".

New took him into Pearcy's office and repeated this to Mr. Pearcy, who said he was not involved in anything and would prosecute any law violator, including Respondent, despite their close friendship. Johnson did not say what the "bomb" was (R. pp. 3960-3963).

There was no evidence of any friendship between the Prosecutor or Respondent and King, who, like Haine, was on the Force when Respondent became Sheriff, hence Director. Petitioner knew this (R. p. 5975).

6. October 26th, Grand Jury, and McAdams' first appearance.

The next day (Tuesday, October 26th), Petitioner requested Deputy Prosecutor Bath to take McAdams' statement to the Grand Jury "*immediately and directly*," unbeknown to either the Prosecutor or Respondent, (R. pp. 3999, 4000), as his superiors expected him to do (R. p. 5975). Bath also took the statement to Pearcy (R. p. 4000, 1), who called Respondent over and gave him a copy, and directed that King and 2 other deputies (Grunden and Marshall), named by McAdams appear at once before the Grand Jury (R. p. 4045, 7). Respondent said he would get to the bottom of the accusation, petitioner reporting that he was "visibly shaken." (P. Sep. App. p. A 5).

In his accusatory statement, McAdams gave his residence as "1202 Perrysville Avenue, Danville, *Illinois*." (R. p. 2595). Pursuant to instructions, Bath sought information as to where McAdams could be served a Grand Jury subpoena. He obtained the address of 1215 North Arsenal Avenue, Indianapolis, Indiana, and wrote it on

the McAdams statement, from whom he could not recall (R. p. 4001, 2). When the subpoena server found McAdams was not there (R. pp. 3953, 4), the Prosecutor called Respondent to help find McAdams (R. pp. 4085, 6). A visitor slip showed McAdams had friends on Bate Street, where Deputies Robert Atwell and Sgt. James Wells found and requested him to go to the jail, which he did, driving his car (R. p. 4155, 7). Upon arrival, he was asked if he signed the statement and he said he did, that it was "political" to get rid of Respondent (R. p. 4333, 4). Respondent was notified that McAdams was there and called the Prosecutor, who sent over a subpoena.

Respondent did not see McAdams on this occasion. At Respondent's instructions, Sgt. James Mellene, who was in charge of the Reagan investigation, accompanied them and brought McAdams back for questioning (R. pp. 4335, 6).

7. McAdams retracts three times.

McAdams was taken to Respondent's office. Respondent said to McAdams he had been told that McAdams said the statement *"was some kind of political deal to get me out as Sheriff."* McAdams replied that the statement was *"a bunch of lies" "cooked up with Rick Johnson and Bud Cottey"* and he gave it *"because they said they'd get me out of jail."* He said he had told the Grand Jury the truth and agreed to give a truthful statement to Sgt. Mellene (R. p. 6285). He signed a repudiation statement (R. p. 2605, 9).

It was this incident upon which Petitioner based its repeated accusations of intimidating McAdams (A. App. pp. 12a-25a). Permitting Respondent and those present to testify to what occurred at this time is what Petitioner complains of as hearsay. (R. pp. 6283, 6).

As the subsequent Grand Jury Report (November 23rd) shows, McAdams did repudiate the statement before it (R. p. 5747), as he also did in open court on October 28th (R. p. 2839, pp. 17 to 21). In this hearing, Judge Fife refused to permit McAdams to tell what happened or hear other evidence proving false his accusatory statement, although the Prosecutor "implored" Judge Fife to hear such evidence (Id. pp. 22 to 30), Judge Fife saying, that morning, he had read of more brutality in Petitioner's paper, (Id. pp. 24, 25) (the Derringer case), and releasing McAdams had been none of the Prosecutor's business (Id. p. 26).

While taking his statement, McAdams saw a whiskey bottle in a desk drawer with one or two "shots" left, and said he'd like to have it, since he had a "hangover." After signing the repudiation he left, soon returning, and asking for the bottle. Mellene directed someone to take it to McAdams, who was outside the door. It had been evidence in an unrelated case. (R. pp. 4339-4343).

8. Erbecker, Johnson steers McAdams to him.

McAdams then returned to Bate Street, where Johnson soon arrived. McAdams told Johnson the Grand Jury had directed him to reappear the next day for a "lie detector test" and further questioning. Johnson suggested that he consult "*his attorney, Mr. Erbecker,*" (R. pp. 7192, 3), *who had not been his attorney,* (R. p. 6179), but who was attorney for most of the other criminals petitioner later quoted in denouncing Respondent.[1]

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[1] (Anthony: R. pp. 5416 & 7304) (Burton: R. pp. 7297) (Daniels R. pp. 4208 & 7290) (Haine; R. p. 2589 to 2891) (Kaufman: R. p. 4198) (Ritzert: R. p. 4249 & 7293) (Squillan: R. 2543, 4 & 7278, 81) (Thomas: R. p. 5398, 5th page of statement) (Wright: R. p. 5385, 2nd page of statement) (Williamson: R. p. 7300) (Young: R. 4246, reverse of page 3).

Thereafter Erbecker was McAdams' attorney (R. pp. 6164-67).

Petitioner knew that Erbecker had a bad reputation (R. p. 5498). (R. App. pp. 44a-45a)

The next morning (October 27, 1965) the first libel publication appeared (R. p. 43, 44). Before dealing with it, and the other 43, (36 of which ran every day through December 1, 1965, plus 8 more through December), we will cite what the evidence disclosed the facts to be, continuing to note what Petitioner knew.

9. Brown, Wm. Kicks and stomps Reagan; Petitioner was aware of it.

Reagan (50), an alcoholic derelict, died Saturday, August 7th, of pneumonia and "complicating bilateral multiple (14) rib fractures" (R. p. 4842). He sustained these injuries on July 14th when kicked and stomped by inmate William A. Brown (26). The assault was witnessed by 4 jail trustys, who called, in the heat of the fray, and 3 deputies ran and shackled Brown. (R. App. pp. 25a-27a)

Petitioner knew of these witnesses, and the substance of what they said, as early as August 14th (R. p. 2541; 7373, 5).

The same day Reagan was sent to General Hospital, arriving at 5:09 P.M. (R. p. 6779-stamp in lower left corner), and Sgt. Haine was directed to investigate the assault (R. pp. 2514, 5 & 2635, 6).[1]

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[1] Petitioner's statement (Pet. p. 6) that Reagan was left for days after he was beaten is an untruth, supported by no evidence.

10. Crick, Brown suspected of beating; Haine's investigations.

It was thought Brown had also attacked Danner Crick (62), another alcoholic derelict, who had been sent to General Hospital at 6:30 P.M., August 13th, and died at 1:30 A.M. of pneumonia. Post mortem disclosed that Crick had two fractured ribs. There was no finding they contributed to his death (R. p. 6910).

Sgt. Haine was also directed to investigate Crick's case. He took an exculpatory statement from Brown, "*I gave him a few baby taps on the face.*" That was all Haine did (R. pp. 6917, 8).[1]

Haine did nothing regarding the Reagan assault, or purloined the Reagan case papers, as he wrote Squillan he had done, for him, in the Squillan case (R. p. 3243). The drunkeness charges against Reagan were dismissed August 5th (R. p. 3329). Hence he was not in custody, at death, which petitioner knew (R. p. 2508, 2nd page, par. 5A). For that reason, the Hospital did not notify Respondent (R. p. 2066). The post mortem was the day after death (Sunday, August 8th) (R. pp. 4841, 2). August 10th (Tuesday), an Indianapolis Times[2] article, quoting the jail Captain, concluded that Reagan had fractured ribs and died from "fight injuries in the jail" (R. p. 2327). There is no evidence that anyone did aught to conceal the incident or the truth of its details.

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[1] Except for Brown's exculpatory statement, apparently repeated to Sgt. King (R. p. 6916), that Crick had been sick for 2 days, there is no evidence of delay in sending him to the hospital, as asserted by petitioner. (Pet. p. 6)

[2] The Times was the only Indianapolis daily not owned by petitioner. It ceased publication on October 11, 1965 (R. p. 4451), 10 days before Johnson procured McAdams' accusatory statement.

11. Johnson reads of Reagan's death in Indianapolis Times, Aug. 10th.

Reporter Johnson admitted he read the August 10th Times article (R. p. 7150). He went to the Sheriff's Department and no record of the Reagan investigation could be found. Haine, under suspension (on the Leon Johnson bribe), was called several times at his home, talking to both Reporter Johnson and deputies. At first he acknowledged assignment of the Reagan case, saying the papers were in his desk. They weren't. Called again, on the same occasion, he denied assignment of the Reagan case, saying he was thinking of Crick (R. pp. 2481, 3). The case was then assigned to Sgt. James Mellene.

August 11th, petitioner published the article calculated to intimidate Leon Johnson, "*They killed the wrong man*" (R. App. p. 8a). That afternoon Respondent ordered Haine discharged (R. p. 2506), which led to the merit Board trial in October.

12. Petitioner publishes Reagan death, concealed, Aug. 12th et seq.

The next morning (August 12th) petitioner made its concealment claim in an 8-column banner headline:

> "*FATAL JAIL BEATING BARED*"
>
> *(2nd paragraph)* "*The 26 year old man believed to be the attacker and mentally ill has been freed and records on the beating have disappeared from the Sheriff's office, it was learned.*" (R. p. 2508)

There was no mention of Haine's connection with the case. The assertion that Brown had been freed was false. He was held in the Psychiatric Ward at General (R. p. 2346; Times article) and (5786-commitment papers). Peti-

tioner knew this. It was published, routinely, in its afternoon paper, The Indianapolis News (R. p. 2512).

The Grand Jury, after hearing 129 witnesses, indicted Brown for second degree murder. At his trial Brown admitted a mild assault and immediate shackling by the 3 deputies (R. pp. 4100; 6643, 51). The jury found Brown committed the [redacted]nse but not guilty because of unsound mind (R. p. 3967).

Beginning October 27th, the libel articles asserted that, but for petitioner, the beating and death would have never come to light.

Here are a few examples:

> *October 27, 1965:*
> *"His death and the sheriff's department account of the beating were not made public until The Star received a tip to 'investigate the death of a guy named Reagan from the jail.'"* (Pet. Sep. App. p. A 4-5)
>
> *October 28, 1965:*
> *"Both the fact that he had been beaten and that he had died were conveniently ignored by the Sheriff's office. Only after The Star, upon receiving a tip, investigated, were these facts brought to light."* (Pet. Sep. App. p. A 16).
>
> *November 1, 1965:*
> *"The jury has been investigating jail brutality since The Indianapolis Star revealed last week that one inmate, Elmer L. Reagan, who died in Marion County General Hospital of pneumonia caused by a beating, allegedly was attacked by a deputy."* (Pet. Sep. App. p. A 34)
>
> *November 3, 1965:*
> *"Since the investigation started, following a report by The Indianapolis Star on the fatal beating*

of inmate Elmer L. Reagan. 11 former inmates have told of brutality at the jail." (Pet. Sep. App. p. A42)

November 7, 1965:

"But the pitiful—and portentous—death Aug. 7 of the jail inmate, Elmer L. Reagan, 50 years old, was unreported until The Indianapolis Star learned of it five days later. Cause of his death was pneumonia, brought on by the smashing of his ribs." (Pet. Sep. App. p. 61)

November 19, 1965:

"When the Star disclosed Reagan's death, sheriff deputies said Reagan had been beaten by a mental patient, who was later charged with second degree murder. But when The Star learned of Reagan's death, no reports existed regarding Reagan's beating, his hospitalization or his death, and no investigation was in progress." (Pet. Sep. App. p. A. pp. 105, 6)

December 26, 1965:

"The Aug. 7 death of the inmate, Elmer L. Reagan, was first reported by The Star, and a notarized statement made later by another inmate accused a jail deputy of the fatal beating." (Pet. Sep. App. p. A 167)

13. Despite clear evidence petitioner deceives Judge Arterburn.

If it be argued that no reader would understand these articles as stated above, let us note how Indiana Supreme Court Judges Arterburn and Hunter read them:

"The series of publications upon which the complaint is based was brought about when a newspaper reporter (Rick Johnson) in October, 1965 learned that two inmates (Elmer Reagan and Dan[illegible] Crick) had died following beatings in the old Marion County jail the previous July." (First sen-

tence of 2nd paragraph of reversing opinion. Pet. App. p. 2a)

Johnson's testimony that he had read the August 10 Times article, and petitioner's foregoing *later* false publications, were all quoted in Respondent's Indiana Supreme Court "Appellee's Brief," at pages 33-35, and there related to Mr. Johnson's statement that, if McAdams signed the accusation, they could get a new Sheriff, i.e. "kill the son-of-a-bitch politically," if, as petitioner was publishing, "it had been brushed under the rug."

14. Five facts proved McAdams lied: 4 well known to petitioner.

Immediately known facts strongly indicated that the accusation was wholly fabricated. The Reagan portion is quoted in Judge DeBuler's opinion, (P. App. pp. 28a & 29a; in full (R. p. 2595):

1. *McAdams said:* Reagan was housed on the first floor. *(Fact).* He was housed in the basement cage.[1] (R. pp. 4253, 4; 2131, 2; 2366). Now admitted (Pet. p. 6). *Petitioner's knowledge:* It was aware of this before the first recovery publication. (P. Sep. App. p. A66, par. 12-2-7-11).

2. *McAdams said:* That King beat Reagan 3 times on July 14, at 6:30 PM (on the first floor), at 7:30 PM (in the basement) and 1030 PM (again on the first floor). *Fact:* If true, 40 to 100 inmates would have seen, and some 600 would have heard the screams McAdams described. (See

[1] Petitioner now seeks to strengthen its case upon abuse in the use of the basement cage (Pet. p. 6). Reagan was there because elsewhere was visible to female visitors and he'd lay naked and urinate. (R. 4253, 4). Crick was removed to the basement cage for the same reason (R. pp. 2391, 3). Additionally, Reagan would defacate and then rub it on his sores (R. p. 2373). He would be showered and bandaged. Then he would tear off the bandages and rub defacation in his sores (R. 2373, 5), caused from scooting around on the floor.

Jail Drawing (R, p. 2115), and testimony (R. p. 4772, 3). *Petitioner's knowledge:* Petitioner knew this. (R. pp. 5930, 1).

3. *McAdams said:* Reagan was taken to the hospital in the wee dark hours of the morning of July 15th. *Fact:* He registered in the hospital at 5:09 PM, July 14th, in broad daylight (R. pp. 2077 and 6779). *Petitioner's knowledge:* It knew this *prior to the first recovery publication* (Nov. 7th), the City Editor saying (Nov. 6th), "We don't know. Lay it out just as you found it." (R. App. p. 27a-30a)

4. *McAdams said:* King twisted Reagan's arm behind and walked him across the floor, down the stairs, and, later, back, with no mention of any ambulatory difficulty. *Fact:* Reagan claimed he couldn't walk. (R. pp. 2421-7) and did so only once in jail, (staggering, though supported). (R. pp. 2419, 24) and was carried downstairs when transferred to the basement cage (R. p. 4254). Except for that one occasion, every one testified he claimed he couldn't and didn't, walk, and there was corroboration from previous hospital records. (R. App. pp. 30a-32a). *Petitioner's knowledge:* As early as August 12th, petitioner knew Reagan had been to the hospital for "leg injuries" (R. p. 2508 Par. 6) Petitioner's reporter, John Dean, was so informed by Prosecutor Pearcy; also, facts regarding Reagan's rubbing feces into his sores caused from scooting around on the floor (R. App. p. 32a). Additionally, hospital personnel had read Reagan's medical records to Reporter Johnson prior to November 7th (date of the first recovery publication). (R. pp. 7208, 9). These records disclose Reagan had claimed he could hardly walk when he voluntarily sought help from General Hospital, while "filthy and unshaven," on June 3rd, June 17th and June

21st; that City Police took him there on June 26th (immediately following his arrest) and Respondent's office took him on June 28th, and again on July 8th, six days before Brown beat him and he was sent back (July 14th), where he remained, lingered and died on August 7th. *Reagan's average stay at General on these 6 occasions was 1 hour, 57 minutes.* On August 6th, the Neurology Staff wrote a criticism of "Dr. Davis" for not being impressed with Reagan's claims, as the nurses were (R. App. pp. 30a-32a)

5. *McAdams said:* Deputy Grunden followed Sgt. King to the basement. *Fact:* Grunden was not on duty July 14th. (R. pp. 2622 & 3620, 1). *Petitioner's knowledge.*[1]

15. Petitioner's buildup of fear and desperation.

October 27th, Petitioner published that Respondent was "visibly shaken" (P. Sep. App. p. A5; par. 1-14-4-2), a prelude to assertions of fear and concealment of wrongful and desperate future acts. The same day it published flatly it had inmate and deputy eye witnesses to King beating Reagan. It did not. (R. App. pp. 49a-71a)

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[1] This fact was not even realized by Grunden for a week or so after the first publication, when Deputy Moore happened to notice the shift report and recognized its significance, in light of the publications (id). There is no direct evidence petitioner knew this prior to any of the libel articles. Evidence does indicate it was quite unsure, because right after the first libel article, Reporter Johnson called Deputy Finney (claimed at the trial as a "deputy tipster") offering not to print a critical citizen's complaint about him, if he, Finney, would tell him who worked the second shift and the names of some long-time prisoners in BR cell block, where McAdams was on July 14th. Johnson specified no date. Finney agreed and answered as of this late October date. Among others, Finney correctly named Deputy Ping as then being on the second shift (R. App. p. 59a). Ping did not become a deputy until August 1st (R. pp. 2632, 3). Thereafter, Petitioner claimed Ping was "involved or had first hand information" of King beating Reagan. (R. p. 7363, 5)

16. Tipsters; deputies claimed as such; Johnson changes testimony.

In his August 3rd, 1966 deposition, Johnson swore that on October 7th a deputy "tipster" (identified at the trial as Cottey) *merely told him McAdams wanted to talk to him and he (Johnson) only got the impression that McAdams would tell about the King-Reagan beating.* At the trial (June 1967), Johnson swore Cottey did say McAdams would tell him King beat Reagan (R. App. pp. 67a-69a).

All three of the claimed deputy "tipsters" (Robert Atwell, Finney and Cottey) denied they told Johnson what was published. Their testimony is record cited and copiously quoted in Appellee's Indiana Supreme Court Brief, pages 146-192). One merely repeated the rumor Johnson had been spreading since mid-August, when, evidence indicates, a quid pro quo compact was made with Haine (R. App. p. 56a-58a also pp. 69a-71a).

17. McAdams vanishes, headline.

The second publication (October 28th) proclaimed, in an 8-column banner headline, "*BEATING WITNESS VANISHES.*" McAdams had actually gone home to the address in Danville, Illinois that he gave Petitioner in the accusory statement (R. pp. 2953, 5 & 6173). He left right after Johnson counseled him to consult Erbecker regarding reappearing before the Grand Jury.

This article's clear implication was that McAdams had been done in. Reporter Quinn said they so feared, (R. pp. 4627, 8), hence it is a fair inference petitioner intended such public message.

18. Petitioner states alleged meanings editorially and precisely.

Petitioner editorially, in the same issue, made clear its message to the public.[1]

There was no mention of the requested reappearance before the Grand Jury, petitioner steering McAdams to Erbecker and McAdams "Vanishing" to the very address he gave petitioner as his residence.

19. Assistant Publisher's admissions as to meanings, A.M. and P.M.

The Assistant Publisher, E. S. Pulliam, admitted this referred to the Reagan case and charged exactly what Respondent alleged in his complaint. That afternoon, under questioning by his attorney, Mr. Pulliam said that, in the context of all the articles, Respondent was not so charged, even in the foregoing. (R. App. pp. 32a-37a).

20. Peace, if Respondent would accuse King, else Crick is next.

When Petitioner learned of the time discrepancy of Reagan's last hospitalization, Reporter Johnson called on Ed Lewis, a friend of Respondent, and proposed to lay off Respondent if he would, among other things, say he believed McAdams' accusation, else he'd expose another jail murder. Respondent refused. (R. App. pp. 39a-40a).

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[1] *"Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history."* (2-1-7-2) (P. Sep. App. P. A15)

* * * * * *

"Now Sheriff Robert H. Fields says he has obtained a 'repudiation' of the witness' original account of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What would induce the witness to change his story?" (2-1-7-11) (P. Sep. App. p. A17)

Then, on November 11th & 12th, Petitioner published (P. Sep. App. pp. 78-80) an accusation by State Farm convict Neville that he witnessed a deputy viciously beat Crick, who was carried out apparently dead (R. pp. 6911, 13). Reagan wasn't mentioned on November 11th, and only once on November 12th, but on these days Petitioner resumed its defense of Haine.

21. Crick accusation fails; back to Reagan.

Jail, City Police and hospital records immediately disclosed that Neville and Crick were never in jail at the same time.

Respondent's attorney wrote a statement citing all these records. It was published in the third issue of a weekly, which started right after the Times folded (R. p. 5369). Counsel then caused it to be mailed (certified) to Petitioner from Fowler, Indiana (R. pp. 6497, 8). Reporter Donohue also took a copy of Editor Connor (R. pp. 4513, 4), who already had a copy (R. p. 4515) and Donohue checked the cited records, finding them accurate (R. p. 4507).

Petitioner never retracted (R. App. p. 40a-41a). It simply reverted to Reagan as the chief accusation, carrying Crick merely as a case of neglect thereafter (articles from November 13th on) (P. Sep. App. pp. A 88-A 171).

22. Petitioner advertises protection for "come-forth" witnesses.

October 30th and November 2nd, Petitioner began, in 8-column banner headlines, to state that Judge Fife had forbidden Respondent to question witnesses (R. pp. 51 & 55). Within a week Petitioner interviewed 16 "come forths" and afterwards it had no more although it published its charges for 28 more days, continuously, plus 8 more scat-

tered days until Dec. 28th. In every case where a real incident was referred to it was identified and evidence of what really occurred was admitted over Petitioner's "hearsay" objections. None of this evidence was ever, in any respect contradicted. Even where the incident was fabricated Petitioner objected to additional evidence corroborating the fact that it was so fabricated. For example, one of the come forths (Neville), who made the Crick accusation, said a deputy broke his nose (R. p. 55). Petitioner objected (as hearsay) to the testimony of the irate father who broke Neville's nose (R. pp. 6152, 8) between his frequent stays in jail (R. pp. 5347-6361),[1]

23. Connor, editor, "We were publishing brutality, not non-brutality," and so Petitioner changed statement of an honest reporter.

Two other "come forths," Hembree (in jail twice) and Roberts (6 or 7 times) during Respondent's two-year incumbency, told Reporter Donohue that they saw no brutality. Donohue included these statements in his manuscript. His superiors removed all of it from the publications (R. App. pp. 41a-44a).

24. Grand Jury, "Whitewash" and death threats; photos on page 1.

The Grand Jury heard 129 witnesses (everyone suggested by Petitioner). It found McAdams' statement utterly false and, had he sworn to it, would have indicted him for perjury (R. p. 5747, par. 5). Petitioner published the Grand Jury Report (id) as a sub-story (November 24), to

[1] The statements of these come forths are in the Record at pages (4197) (4206, 7) (4216) (4242) (4248) (4441, 2, 3, 4, 5, & 6) (4660) (5343) (5385) (5398) and (5400).

the lead story, calling the report a "whitewash" in an 8-column banner headline. (R. p. 82). Reporter Johnson had called the report a "whitewash" (R. pp. 3575, 6), then went in and saw Judge Fife and Petitioner then published (8-column banner headline) that Judge Fife called it a "whitewash" (R. p. 82) (R. App. pp. 44a-48a) Judge Fife's bailiff (Patterson) said Johnson told Judge Fife it was a "whitewash" (R. pp. 6719, 20). Judge Fife had reasons to be pliable (R. App. p. 44a-48a).

With the "whitewash" headline, Petitioner published that criticism of the report was mounting (R. p. 82, par. 29-1-5-1) and published the names and addresses of the jurors (p. 8., par. 29-12-3-4). In the next issue (November 25th), Petitioner published the jurors were under threats of death and residence arson and had asked to resign. Petitioner added, on page one, their names and photographs (R. p. 84).[1]

Judge DeBruler (with J. Jackson) said "*It is impossible to understand the devastating nature of this attack without reading the actual exhibits.*" With headlines, they are all collected together at pages 43 through 100 of the Record, as Complaint Exhibits, admitted by the Answer.

25. Petitioner tells public Respondent won't talk; a falsehood.

Each time a "come forth" gave a statement, Petitioner published the accusation under an 8-column headline. November 3rd (the 8th day and the day of the 8th publication of libel), Petitioner published:

[1] Previously Petitioner had published a cartoon depicting the Grand Jury in a flood light under the caption "NO BLACKOUT HERE" (R. p. 5453). This was November 14th. November 2nd Reporter Johnson had planned to interview the Jurors in their homes, until warned by Deputy Prosecutor Bath (R. pp. 4004, 5).

> *"The Star agrees that the police and sheriff's departments have 'their rights' and in reporting complaints about brutality at the Marion County Jail has in all its stories asked Sheriff Robert H. Fields for comment prior to publication." (R. p. 6383).*

This was an untruth, supported by no evidence, and categorically refuted by Respondent's uncontradicted testimony. (R. pp. 6383, 5.) Neither does the text of any of 44 publications indicate any effort to ask Respondent, or any of his deputies, who were allegedly involved, to comment.

26. Petitioner refuses Respondent's offer of clear evidence of falsity.

Respondent's statutory notice of retraction, required by Indiana law (before suing), added this offer:

> *"If, for any reason, this notice is not clear you, or someone on your behalf, may seek clarification, which will be cheerfully furnished."* (R. p. 101).

Petitioner made no response and, after 5 days, the action was filed on January 10, 1966.

On March 13, 1966, Petitioner published its boast that it had succeeded in its original threat. (R. p. 4153.)

27. The old jail conditions and Respondent's care of inmates.

Into the libel articles, Petitioner interlarded accusations of neglect. One quoted source was the Coroner, Dr. Robert Collins (P. Sep. App. pp. A 78; A 83). Petitioner never disclosed that Dr. Collins was the doctor General Hospital had assigned to the jail prior to January 1, 1965 (R. p. 2363, 4). Respondent had to rely on General Hospital,

having no budget for medical care (R. pp. 6345, 6). Prior to these articles, Respondent had complained (in writing) to General Hospital about the poor care of inmates, and specifically complained of Dr. Collins' neglect and excessive prescription of drugs. Evidence of this was offered, to which Petitioner objected as hearsay (R. pp. 6342, 3).

The new Jail was occupied during September 1965. The old Jail was overcrowded many-folded (R. pp. 5147 & 7043). Lack of individual cells precluded separation for maximum safety (R. pp. 2115, 9). The steel was rusting out; concrete was crumbling and every Grand Jury for 25 years had "decried" its condition (R. p. 6352). Within 3 months after Respondent became Sheriff, he caused corridors to be converted into additional cell blocks and, for the first time in 25 years, every prisoner had a bunk to sleep on (R. p. 2108, 11). Those in the basement cage (used mostly for holding "book-in" lines) had mattresses to sleep on (R. p. 2127). There was agreement that the old jail was unfit for human occupancy, without the false exaggeration by which Petitioner sought to obscure the real thrust of this case. (Petition p. 6).

To this jail were sent stretcher cases, once in a grocery cart (R. pp. 4556 & 4744). A former Sheriff once announced, law or not, he'd refuse to accept mental cases. After that, police usually charged the mentally suspected with disorderly conduct (R. pp. 4557, 8).

In insanity proceedings, the Sheriff was ordered to hold the subject until a hospital bed was available (R. pp. 5786, 8).

28. Petitioner's misstatement of the crux of this case.

The 20 lines with which Petitioner purported to introduce this Court to the facts referred to bad physical con-

ditions in the old jail, which Respondent condemned and did all within his power to correct and which no longer existed, the new jail then being in use. The 20 lines also fostered the belief that many "inmates and former inmates" said deputies beat both Crick and Reagan.

> "... *accusations by other inmates and former inmates that deputy sheriffs had been responsible for these beatings (Reagan & Crick), as well as numerous others....*" (Petition p. 6).

None but McAdams and Neville so said.

Besides McAdams and Neville, there were 15 "come forths." Their statements were constantly used to bolster the McAdams accusation. See, especially, the first recovery publication (No. 12: Nov. 7th) (R. p. 62, 3) as well as the headlined falsehood that Brown was shackled at the time he stomped Reagan, not during the heat of the fray. (Id).

Respondent identified each incident, where details permitted, and offered proof of what did, and did not, occur. It was to this evidence that Petitioner refers as hearsay.

(E)

ARGUMENT
AS TO SPECIFIC QUESTIONS RAISED.

1 Sufficiency of Evidence as to: (a) Meaning.

1. Admissions as to meaning.

On his deposition, one morning, Assistant Publisher E. S. Pulliam admitted that some of the early publications directly accused Respondent precisely, as alleged. He did so in spite of his lawyer's contrary suggestion (not even camouflaged as an objection) that the accusation was only

against the Sheriff's Department (R. App. pp. 32a to 36a Esp. 35a).

2. Pulliam changes, adopts "cumulative meaning."

That afternoon he adopted the morning suggestion, asserting that all the publications should be read together (R. App. pp. 36a-39a). Thusly Petitioner embraced Respondent's theory of "cumulative meaning" (Complaint's common Rhetorical Paragraphs 12 (P. Sep. App. pp. A 175-6).

But. Petitioner adopts "cumulative meaning" only for the purposes of its objections, and not for determining meaning.

3. Building of Code phrases.

Respondent's appendix discloses, how, in a panaramic view, the build-up of code words and phrases was designed to continue to assert the accusation in shorter terms (R. App. pp. 12a-25a). The emphasis was always on concealment, fear of witnesses (See R. p. 63; par. 12-2-14) and the necessity of calling in the "F.B.I." (R. pp. 82, 83; pars. 29-12-4-6, 7 & 8), and that the prosecutor was protecting Respondent. Throughout its publications and these proceedings Petitioner conveyed the message that respondent had something to fear, but it offered no such evidence.

Only a reading of the headlines and articles can afford an insight into the saturation level by which the code words and phrases were drilled into the public mind (R. pp. 43-100). For the word "whitewash," see (R. App. pp. 44a-48a). This was the accusation that the Prosecutor was whitewashing Respondent. But Petitioner admitted it knew of no special friendship between either and King (R. p. 3975).

The strongest indication of whom Petitioner intended to accuse was failure to even disclose that Sgt. King was the one accused of the murder. If it believed McAdams, it would have been privileged to name him. It did not dare. It knew the truth. It was Respondent, not King, whom Petitioner had threatened to destroy.

In its Indiana Supreme Court Brief (p. 15), Petitioner specifically waived its alleged error in the refusal of its tendered Instruction No. 14 (R. p. 7600), to the effect that there was insufficient evidence to prove Respondent was accused of intimidating McAdams.

Petitioner attempts to exhibit to this court a deceptively mild tenor by printing only Complaint Exhibit 40 (the last of the recovery publications) in its Brief, proper (p. 11). Only an examination of the whole series, with headlines, can afford an understanding of the recovery publications (12, 14, 18, 20, 37 and 40). The headlines, so obobscure in the reprint, can be seen in (R. p. 43 to 100).

Respondent's name need not appear in the article if there be proof it accused him. *(Rosenblatt v. Baer (1966) 383 U.S. 75, 88; 15 L.ed (2d) 597, 606)*. In *Baer* there was but a single publication.

Previous and later publications made clear the continuing accusation against Respondent.

For an analysis of how frequently Respondent had been accused by name, see Judge DeBruler's opinion (P. App. pp. 26a-27a). See, also (R. App. pp. 12a-25a-excerpts).

The *Baer* decision notes that the article consists of *criticism*, of governmental management, albeit susceptible of imputing "peculation."

In this case raw, universally condemned crimes were charged, the *criticism* of which is universally shared.

We submit there is a clear distinction between *criticism* and the *assertions* upon which it is based. We submit the former is never libelous, the latter being the only basis for a defamation action. Respondent's action is not based upon Petitioner's criticism of murder, *but* its assertions he aided and abetted murder by tampering with a witness, and maliciously prosecuting an innocent man.

4. Verdicts, the logic of.

The jury's reasons for finding, for Respondent, on the 6 paragraphs are unknown. But there are reasons. The first, No. 12 (Nov. 7), came following City Editor Connor's "we don't know" statement. The second was on No. 14 (Nov. 9). There Petitioner proclaimed in an 8-column headline—"4th PERSON TOLD OF BEATING INCIDENT." This was Hester saying McAdams told him King beat Reagan. Hester was right there in jail with McAdams on July 14 and would have seen, or at least heard, if it had happened (R. p. 4248), and Petitioner knew it (id). The same applies to other ex-inmates in jail on July 14th, who gave statements to Petitioner, saw (and distorted) other incidents, but weren't asked and said naught of King-Reagan (R. pp. 4303, 9), and Petitioner knew this regarding at least two, besides Hester: (R. pp. 4206) Daniels; and 4246 (Ritzert).

The next 2 recovery publications (Nos. 18 & 20) (R. pp. 71 and 73) followed Petitioner's attempt to coerce Respondent into falsely accusing King and its futile effort to substitute Crick's "murder" for Reagan's.[1]

The final 2 recovery publications (No. 37, Dec. 3rd; R. p. 93) and (No. 40, Dec. 18th; R. p. 96) came following

[1] Also see (R. p. 2297, 99) then R. p. 55, par. 7-10-4-1;) also, (R. pp. 4038, 41, then 5371 (2 pages), then R. pp. 68 and 69), which disclose the fraudulent manner in which both of Neville's accusations (including Crick) were obtained.

the Grand Jury Report on Nov. 23rd (R. p. 5747). The savagery of the attack from this point merged in the final recovery publications.

That the parties expected verdicts upon other paragraphs does not divest the jury of its responsibility and authority to make the findings it believed warranted from all the evidence. (See J. DeBruler's Opinion, P. App. pp. 44a to 46a)

5. Petitioner conceded validity of "Cumulative Meaning" in Trial Court

In the Trial Court petitioner filed no demurrer or other challenge to the complaint *nor to any paragraph thereof.* In its brief supporting its Motion for Summary Judgment it informed the court:

> "These examples are not offered as a substitute for a construction of *all* the publications *in context.* Plaintiff alleges in each rhetorical paragraph 12 of each paragraph of complaint that the publications must be so construed, and for the purpose of this motion defendants agree" (R.p. 452k) (Emphasis by Petitioner)

Nor could anyone endowed with even a moderate sense of logic and fairness disagree. It would have been more logical to have filed one paragraph of complaint on the whole series, but Indiana law did not permit one to do so. *(Barker v Prizer (1897) 150 Ind. 4 at pp. 10 & 11)*

(1) Sufficiency of evidence (con't.) as to:

(b) Knowledge, reckless disregard, etc.[1]

(1) Absolute absence of probative evidence supporting the accusation.

There was never any basis for the accusations except

[1] Since it is interrelated, Respondent will here discuss "The Clear and Convincing Evidence" question presented (Pet. p. 5).

for McAdams' accusatory statement. Petitioner's knowledge, etc., must be measured as of Nov. 6th, the day preceding the first recovery publication on Nov. 7, although most of its knowledge pre-dated the first publication, Oct. 27.

(2) An inventory of Petitioner's pre-publication knowledge, 15 specific plus 5 general items of evidence, of which Petitioner had knowledge.

(1) Trusty "eye witnesses" saw Brown attack Reagan; called 3 deputies, who ran and shackled Brown in the heat of the fray. Petitioner knew this, generally, as early as Aug. 14th (R. p. 2541), and the details before the first recovery publication (R. pp. 7373, 5). Petitioner claims it got the "*anonymous*" tip that King beat Reagan (R. p. 44, par. 1-1-7-5) but, in the intervening 2½ months, made no effort to interview these witnesses, almost completely ignoring, and always denigrating, this evidence in any passing reference. Yet it proclaimed to the public, in headlines, that "STAR REPORTER DIGS 11 WEEKS TO GET FACTS" (R. p. 6706). In the article it proclaimed that Deputies gave it facts. The only evidence of this assertion was Johnson's trial testimony, which he admitted contradicted his earlier deposition. (R. App. pp. 67a-69a)

(2) Reputable witnesses (R. pp. 3316, 24 (and even Haine, himself, at first) said the Reagan case was assigned to Haine on July 14th, (and Johnson knew it; R. p. 7148, 9) explaining the delay in investigation from July 14th to August 11th, and Petitioner knew Reagan was not in custody at death (R. p. 2508-par. 5A)

(3) That on an anonymous tip (if indeed there was any) Johnson circulated the accusation from Aug. 14th until McAdams made the accusation Oct. 22nd. (R. App.

pp. 69a-71a) The "anonymous tip" underwent some metamorphosis in Editor Connor's rewrite, and still more at the trial (R. App. pp. 49a-58a)

(4) That Respondent was a reputable and honorable man and there was no reason to suspect he would "countenance anything evil or murder or brutality." (R. p. 5474, 5).

(5) That Respondent had no reason to protect Sgt. King any more than Sgt. Haine, whom he had just vigorously prosecuted (R. p. 5975).

(6) It knew it virtually threatened to "involve Prosecutor Pearcy if he didn't go along" (R. pp. 3960, 63) at a time when it obviously gave a bad address for McAdams while trying to get McAdams' unsworn statement to the Grand Jury (R. pp. 3999, 4000), which statement recited that it was sworn (R. p. 5747, par. 5).

(7) That whatever Deputy Cottey told Johnson about McAdams wanting to talk to Johnson, it only gave Johnson "the impression" it was about King-Reagan; so Johnson swore when deposed Aug. 3, 1966. But in June, 1967, after the so-called deputy tipsters had denied the truth of the publication (R. App. 61a-66a) Johnson changed his testimony to say that Cottey did say McAdams wanted to tell him King beat Reagan (R. App. pp. 67a-69a).

(8) That there were obvious reasons to doubt the veracity of McAdams because:

(a) He was a confirmed criminal;

(b) He successfully bargained his accusation for his release from 4 months in jail;

(c) He was encouraged to think he was aligned with a powerful Judge and newspaper in an effort to get

rid of Respondent as Sheriff (R. App. pp. 9a-12a), rather heady wine for a petty criminal.

(9) That what McAdams described would have been heard by some 600, and seen by 40 to 100, inmates, yet it included no names of witnesses in the accusatory statement.[1]

(10) That McAdams said Reagan was housed on the first floor, whereas Petitioner had known since November 6th that he was housed in the basement; that Brown was not shackled, as the headline (R. p. 62) proclaimed he was at the time he kicked and stomped Reagan, but was shackled in the heat of the fray. (R. p. 62, pars. 7-2-7-11,12).

(11) That McAdams said Reagan was walked across the floor, down the stairs and back. From no later than Nov. 6th, Petitioner knew Reagan had trouble walking, in fact, claimed he couldn't walk, and had been hospitalized for that problem. McAdams said nothing of Reagan staggering or claiming he couldn't walk as King walked him, with his arm twisted behind him. (R. App. pp. 27a-32a)

(12) McAdams said Reagan was taken to the hospital in the wee, dark hours of the morning, whereas he was taken at 4:55 P.M., arriving in broad daylight at 5:09 P.M. Petitioner knew this no later than Nov. 6th. (R. App. 27a-29a).

(13) That on Aug. 26, 1965 McAdams asked to serve his 6-months' theft sentence in jail rather than on the State Farm, after first being sentenced to the State Farm. This was published in The Star, though City Editor Connor said it was later that it was brought to his attention (R. p.

[1] It headlined so-called "McAdams told me the same story" ex-inmate witnesses. One (Hester) was in the same area with McAdams. Petitioner interviewed others who were in the jail on July 14th. Petitioner asked none if they had seen or heard what McAdams described.

5946). On Oct. 22 McAdams said he saw a deputy murder a man on July 14, petitioner publishing on Oct. 27th:

> *"I've been in and out of that jail a lot of times. It might have been me that got beaten to death."* (R. p. 43, par. 1-14-4-4).[1]

(14) That Reporter Johnson tried to blackmail Deputy Finney into serving as a tipster after publication of the Oct. 27th article, purporting to quote a deputy tipster who, at the trial, Johnson identified as Finney. (R. App. pp. 58a-61a).

(15) Petitioner knew, by admission of its Assistant Publisher, that early publications had accused Respondent, as alleged (R. App. pp. 32a-36a); and yet Nov. 8th, before the 31 last publications, including 5 recovery publications, it refused to consider a requested retraction delivered in cordial manner by Respondent, in person, to the Assistant Publisher, in person (R. pp. 6385, 7).

Into these 15 categories falls virtually all the evidence offered upon the issue of falsity. Petitioner knew of most of it before the first publication and all of it before the first recovery publication.

Eight days after the last libel publication, Respondent offered Petitioner any clarification it, or anyone on its behalf, would ask. (R. p. 101; quoted in P. Sep. App. (as a footnote), p. A 174). The offer was ignored. (R. pp. 5505, 7)

Petitioner also knew these additional general facts:

(1) McAdams' accusatory statement was the solitary foundation for Petitioner's accusations.

(2) McAdams retracted it to Respondent, and Petitioner knew this, prior to the publication of 43 of the 44

[1] Petitioner objected (as hearsay) to the record of McAdams' Aug. 26th request that he serve in jail (R. pp. 5794-5796, p. 12).

publications in question, including all 6 recovery publications. (R. p. 45, par. 2-1-5-6, P. Sep. App. p. A8).

(3) McAdams retracted it in open court, and Petitioner knew this before the publication of 42 of them, including the 6 recovery publications. (R. p. 49, par. 3-1-7-5; P. Sep. App. P. A 20).

(4) McAdams retracted it before the Grand Jury, and Petitioner knew this before publication of 15 of them, including the last two recovery publications. (R. p. 5747, par. below No. 4).

(5) McAdams was not a reliable witness, on his face, and became wholly incredible in the face of the indisputable physical circumstances to say naught of the three deputies who shackled Brown in the heat of the fray.

Alone, McAdams' criminal record was a potent warning of his probable falsity *(Curtis Pub. Co. v. Butts (1967) 388 U.S. 130, 158; 18 L.Ed. (2d) 1094, 1112).*

(3) Good faith, Johnson proclaims his.

Yet, it rested its case on lack of sufficient knowledge to warrant a finding of reckless disregard of falsity[1] or a high degree of awareness of probable falsity[2] upon Reporter Johnson's last answer on direct examination:

> *"Q. Now in the publication you now referred to, and to any other publications which are exhibits to this complaint, Mr. Johnson, did you write anything in any one of those articles, which you knew at the time was false, or which you were aware at that time, was probably false?*

[1] N. Y. Times v Sullivan (1964) 376 U.S. 254; 11 L.ed (2nd) 686
[2] Garrison v Louisiana (1964) 379 U.S. 64; 13 L.ed (2nd) 125

"A. Mr. Scanlon, I did not. Anybody that knows me know I would not." (R.p. pp. 7195, 6)

His immediate cross-examination, as narrated by Petitioner, is at R. App. pp. 87a-30a. On further cross, he admitted he had changed his Aug. 3, 1966 deposition as to what his "tipsters" said. (R. App. pp. 67a-69a).

(4) Tipsters, motion to suppress argument.

The basis of Mr. Johnson's faith was "tipsters," especially "deputy tipsters," whom Petitioner refused to identify. It filed its *pre-trial motion* for an order precluding Respondent from "arguing or commenting" upon any inference from Petitioner's refusal to disclose its source of information (R. p. 574), *stating it had, and would, refuse to so disclose at the trial.* It specified arguments which Respondent should be forbidden to make: (1) that Petitioner had no information but had fabricated the accusations; (2) that its refusal to identify its sources of such information was because such sources were unreliable, and (3) that their publications differed from the information given by the tipsters.

The Court sustained this motion, adding that Respondent was not precluded from offering evidence to prove the foregoing points (R. p. 656).

Petitioner had refused to identify its "tipsters." Respondent acquiesced in the refusal and deposed all jail deputies. Only at the trial did Petitioner identify its claimed tipsters. It boasted in the Indiana Supreme Court that it thusly surprised Respondent. But in so saying, *it convicted itself of a crass and indisputable attempt to deceive the jury.* (R. App. pp. 50a-52a).

For the record substance of the deputy tipsters, see (R. App. pp. 49a-71a). A fuller account, with more copious

quotes is gathered at pp. 146-192 in Respondent's Appellee Brief in the Indiana Supreme Court.

(5) The testimony of none of them sustained the publications.

March 6th, 1967 the foregoing motion to suppress was filed (R. pp. 573, 4).

March 10th, 1967 Petitioner took a statement from Deputy Finney, whom it, at the trial, for the first time, claimed as a tipster (R. pp. 3707, 4 pages).

March 13th, 1967, it took a statement from Sgt. Robert Atwell, whom it, at the trial, claimed as a tipster (R. pp. 4169, 3 pages). Atwell was the anonymous one.

Finney, when deposed, in late 1966, swore he had never had a conversation with Johnson, and Petitioner asked no questions on cross (R. pp. 3756, 7). The substance of his testimony is in the Appendix (R. App. pp. 58a-61a).

The other claimed "deputy tipster," *Cottey*, was deposed about the same time as Finney. His total testimony is in the Appendix (R. App. pp. 61a-66a).

Atwell was not deposed because he was not a jail deputy (R. p. 4155), as Johnson had said two of his deputy tipsters were (R. p. 3552). The third tipster was listed first as anonymous, later as "a man" and, at the trial as Atwell. (For substance of his testimony, see R. App. pp. 56a-58a).

This Court stated in *St. Amant*[1] that professions of good faith would avail little where the story was self-fabricated; or based wholly upon unverified anonymous telephone calls, or where the publication is so inherently improbable that only a reckless man would circulate it, or where there were obvious reasons to doubt the informants' veracity or accuracy.

[1] St. Amant v Thompson (1968) 390 US 727; 20 L.ed (2nd) 262.

Every element for doubt is shown here. We submit this is clear and convincing evidence of knowledge or reckless disregard, etc.

(6) The only question presented for review.

Can the defendant, represented by able counsel throughout these proceedings, fail to ask a "clear and convincing" instruction; fail to present the question on appeal (which Petitioner admits, see P. Sep. App. A 241, A 242), and then ask this court to, in effect, give it a new trial, in the face of the foregoing? That is the question. We think it does not warrant certiorari.

Of course, this litigation has been expensive to Petitioner, as it noted (Pet. p. 27). It has not been cheap for Respondent. Nor will it be cheaper if retried, and taken again through the appellate procedures. But the ultimate answer to Petitioner is: Had you accepted Respondent's January 6, 1966 offer to show you all this evidence that he was wrongfully accused and made an honest and forthright retraction, all parties would have been better off and (1) you probably would not have been sued, or (2) if you had, you probably would have won or (3) at worst, under the law of Indiana only nominal damages could have been recovered. *White v. Sun. Pub. Co. (1904) 164 Ind. 426 at 428, 30.*

Reduced to its common denominator, the principal stakes in this litigation are Petitioner's ego and Respondent's reputation, with money a symbolic consideration, albeit quite important, to one of ordinary means who has incurred the obvious expense here indicated.

Petitioner had as fair a trial as imperfect human beings can attain. That is as good as any mortal gets in terrestrial courts and better than is normally available to ordinary mortals.

(7) "Clear and convincing" argument waived.

Petitioner waived argument before the jury (R. p. 712) which it urges upon this court in requesting that the *Seventh Amendment to the Constitution of the United States* be ignored. The *7th Amendment* is a valuable provision to the Bill of Rights and should not be overlooked in balancing the rights of litigants.

More important is the ruling in *Curtis Pub. Co. v. Butts (1967), 388 U.S. 130, 146; 18 L.ed (2d) 1094, 1105* that where a right is clear, it may be waived. Petitioner's conduct of the trial, and subsequent appellate procedure, conclusively shows its familiarity with *"Times and its progeny."* One would be warranted in believing Petitioner hoped to preserve this as a last ditch question, procuring a new trial and thus, by sheer weight of litigation expense, finally exhaust Respondent.

2(a) The Hearsay Question.

(1) Falsity, separate issue, agreed.

The parties were agreed that falsity and knowledge, etc., thereof, were separate elements and that Respondent had the burden of proving both. However, from *"Times"* and its progeny, Petitioner winnowed a holding that any evidence of the falsity of its publications, absent proof of its pre-publication knowledge, etc., was hearsay, regardless of its being otherwise competent.

The most pertinent example of such was evidence of what was said and done regarding McAdams the evening of October 26th, on the very occasion Respondent was accused of intimidating McAdams. Rulings on such objections to truth-evidence regarding separate accusations are moot, since the jury found for petitioner upon all except the King-Reagan case. (See J. DeBruler's Opinion, P. App. pp. 54a & 63a).

Every objection Petitioner denounces as "hearsay" was otherwise competent, except for this contention. Respondent had identified every published incident, and produced evidence of the falsity or distortion thereof *without contradiction in a single case.* The incidence of this class of evidence was governed by the multiple accusations, as was the enormity of the record, swollen greatly by Petitioner's repetitious objections and arguments thereon, as well as the length of this brief.

(2) Court's instruction regarding falsity evidence as it relates to knowledge, etc.

The Court admitted such evidence under Respondent's tendered Instruction No. 6, given as the Court's No. 28, as follows:

> "Plaintiff has the burden of proving:.....
>
> Second: That the accusations were false.
>
> Third: That defendant knew said accusations were false or published them with a reckless disregard of truth.
>
> "In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendant's knowledge of falsity or reckless disregard of truth." (P. Sep. App. pp. A 219, A 220).

By successfully tendering its instructions, Petitioner conceded Respondent was required to prove falsity, as an element, apart, from knowledge or recklessness, etc.

(3) Petitioner's tendered instructions, given, that falsity is separate issue.

COURT'S INSTRUCTION No. 17 (DEFENDANT'S TENDERED INSTRUCTION No. 1)

"It is the law, and I so instruct you, that every citizen, including a newspaper publisher, has a qualified privilege, conferred by the Constitution, to discuss and criticize the official conduct of public officials. This is a fundamental right of citizenship in a democracy, which is possessed by all citizens alike and which may be exercised with respect to any public official, including a county sheriff or any deputy sheriff.

"The citizen's privilege to discuss and criticize the official conduct of public officials is *not limited merely to statements which are true*. Such privilege also includes the right to make false and defamatory statements about the official conduct of pubile officials, so long as the citizen, at the time he makes such statement, does not make them with actual malice, that is, with knowledge that they are false or with reckless disregard of whether they are false or not.

"You are instructed that each and every one of the newspaper articles and editorials attached to the complaint in this action, in so far as they pertain to plaintiff at all, do so only with respect to his official conduct as sheriff of Marion County and thus as a matter of law are qualifiedly privileged publications under the Constitution. Therefore, before plaintiff can recover damages in this action for any of such articles and editorials, on the ground that they impliedly accused him with having committed one or more of the alleged crimes, he must first prove as to such article or editorial *each of the following:*

"1. That it accused him personally with having committed one or more of the alleged crimes;

"2. *That said accusation as well as the statement or statements giving rise thereto were false; and*

"3. *That said accusations as well as the statement or statements giving rise thereto were published by defendants with actual malice, that is, with knowledge that they were false or with reckless disregard of whether they were false or not.*

"*If, with respect to any article or editorial attached to plaintiff's complaint, you find from all the evidence that plaintiff has failed to prove any one of these elements, then I instruct you that plaintiff cannot in this action recover damages as to that article or editorial.*" (Emphasis added) (P. Sep. App. pp. A 211, 212)

COURT'S INSTRUCTION NO. 25 (DEFENDANT'S TENDERED INSTRUCTION NO. 5)

"To sustain his burden of proving falsity, plaintiff must not only prove the falsity of any implied accusation of crime made against him, *but he must also prove the falsity of the statement or statements in the publication which gave rise to said implied accusation.*" (Emphasis added) (P. Sep. App. p. A 217)

(4) Seven correct instructions given upon the question of knowledge etc.

The jury was not misled regarding separate proof of knowledge, etc. Judge Barger so instructed the jury 5 times before No. 28 and once thereafter. (No. 17; P. Sep. App. pp. A 211, A212); (No. 18; P. Sep. App. pp. A 212, A 213); (No. 20; P. Sep. App. pp. A 213, A 214); (No. 26; P. Sep. App. pp. A 218); (No. 27; P. Sep. App. p. A 219); *(No. 28; P. Sep. App. pp. A 219; A 220);* (No. 29; P. Sep. App. p. A 221).

The verdicts show the jury took these instructions quite seriously. *First:* the jury declined to impute Reporter Johnson's earlier knowledge to Petitioner, finding for Respondent only after the telling discrepancy (as to the hour Reagan was hospitalized), was brought to Editor Connor's attention and he said, "We don't know. Lay it out as you found it" (Paragraph Twelve, November 7), and thereafter continuing the accusations in Petitioner's code words, phrases and paragraphs. (R. App. pp. 12a-25a; 27a-29a).

Second: Although uncontradicted evidence showed other accusations false (e.g.) Neville, the jury found for Petitioner upon all the other alleged libels. On these Respondent relied largely upon reckless disregard rather than knowledge.

Under Indiana law, truth is a defense, *(Indiana Constitution, Art. 1 Sections 9 & 10)* and proof of knowledge, etc. has been essential in privileged cases since 1899, at least. *(Henry v. Moberly (1899) 23 Ind. App. 305, at 316, 7).*

Petitioner's rights were not only correctly, but quite effectively protected, under both the State and Federal law.

It is Petitioner's misconception of its rights which leads to this contention. Here are two examples:

(5) The Mellene accusation, the truth of which is called hearsay.

The Mellene Accusation: Sgt. James Mellene had investigated King-Reagan following Haine's failure. He testified May 12, 1967 (R. p. 4313). Sgt. Brown testified May 15th (R. p. 4541). Neither was asked anything regarding the Sheats-Coroder case. Cross-examining Respondent on June 1st, Petitioner asked if Mellene hadn't been "taking money from prisoners" and produced a memorandum by Sgt. Brown from the Sheats-Coroder file, saying, to hold these

prisoners' money because Sgt. Mellene had asked for it (R. pp. 6570, 4). Respondent knew nothing of the incident (id).

On June 6th Sgt. Brown returned with the entire Sheats-Coroder file. It contained receipts showing that Mellene had obtained the money ($114.27) (and other personal property) and, *dated the same day, the receipt therefor from the Property Room Officer of the Indianapolis Police Department.* Mellene had arrested these men, in the act of burglary, within the city limits. By longstanding agreement, it was a City Police case, hence the "loot" was properly placed in the hands of that department (R. pp. 6960, 2; 6981 to 7014). This particular receipt is at page 7013.

Petitioner objected to these other papers in the file from which it had extracted that one memorandum, "*on the ground that they are hearsay . . . for the reason that the defendants have had no knowledge of these. . . .*" (R. pp. 6960, 1). The court overruled, and this was "hearsay" objection New Trial Ground 7ss (R. p. 1940).

(6) Cottey, the knowledgeable tipster. His statement and deposition.

The Cottey Statement and Deposition: Petitioner constantly published there was a failure to investigate, and it claimed Cottey had information regarding King-Reagan (R. p. 7163). Cottey was on vacation Oct. 27th and, upon return, was ill. When sufficiently recovered, his statement was taken (R. p. 6303) on Dec. 20th (R. p. 6306). This was prior to the last 4 libel publications (R. pp. 97-100). His statement was offered and received as evidence that Respondent did investigate, seeking information from Cottey, whom Petitioner claimed had information. Petitioner objected to it as hearsay (R. pp. 6303, 5).

It was admissible as a verbal act. (Judge DeBruler's opinion, with authorities); (P. App. pp. 54a to 63a).

Cottey's testimony was his in deposition, taken by Respondent. Petitioner assigns error because the Court permitted Respondent to read his direct-examination of Cottey's deposition (R. pp. 6818, 21; R. App. p. 62a-63a) because he was alive and available (which he was), and Indiana law did not permit the use of depositions in such cases (which was correct). However, Indiana law did so permit where the other side had read part of a deposition, *which Petitioner had done* (R. pp. 6639, 43; R. App. pp. 62a-66a). *This Petitioner failed to point out, so Judge Arterburn missed the point* (P. App. pp. 13a-15a). Judge DeBruler points out the facts, holding it was not error since Petitioner "opened the door" (P. App. 54a).

(7) Objections, 75, nature not developed.

Petitioner lists, without discussion, record pages of 75 alleged hearsays (P. Sep. App. pp. 198-202). In the Indiana Supreme Court it listed 100 and selected 11 (one of which the trial court had sustained) for discussion (Appellant's Brief, pp. 119-156). Respondent answered these objections (Appellee's Brief, pp. 272-288) and Judge DeBruler deals with them (P. App. pp. 54a-63a). Only 15 of the 100 listed pertained to Reagan, upon which Respondent recovered. So if all 15 are among the 75 listed here, 60 of them are moot, because the jury found for Petitioner on all accusations where Respondent relied upon recklessness rather than knowledge, that is the King-Reagan accusation. But every one of the 100 complaints was against otherwise competent evidence tending to disprove a fabrication, or the truth regarding some distorted incident.

(8) Petitioner's position on hearsay.

Petitioner's position is that it can banner-headline the accusations of a known criminal, (as all of its and Erbecker's clients were), that one of good repute committed a crime. But that the accused may not produce witnesses, who were present at the time and place of the fabricated, or distorted incident, to prove what did not, or did occur. Petitioner denounces this as hearsay. As Judge DeBruler stated, after discussion (P. App. pp. 54a-63a) of the facts and the law:

> *"It is not even an exception to the hearsay rule, which would imply it was hearsay. It is not hearsay at all."* (P. App. 57a).

Petitioner's contentions do not warrant review.

2(b) Admissibility of Threats.

(1) Ill will, motion to suppress any reference to.

Petitioner filed a pre-trial motion to declare inadmissible "evidence tending to show" Petitioner published "out of hatred or hostility" toward Respondent (R. pp. 578, 80), which was overruled (R. p. 658).

(2) Court's instruction on ill will.

Petitioner's threats to destroy Respondent were admitted over Petitioner's objection. Regarding this evidence, the Court instructed the jury:

> "Court's Instruction No. 30 (Plaintiff's Tendered Instruction No. 8):
>
> "Evidence tending to establish that defendant harbored ill will toward plaintiff prior to the publications in question may be considered only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not." (R. p. 7618), (P. Sep. App. A 221).

(3) Petitioner's position on ill will.

Petitioner's objection to this instruction was that evidence of such ill will, that is, threats, was "completely irrelevant."

Petitioner properly preserved this question from its pretrial motion through its objection to Respondent's argument by its attorney, Warren Brown. But it is the same question. Mr. Brown's argument was based upon the foregoing Instruction, which he was just starting to read when Petitioner interrupted him to make its objection. (P. Sep. App. pp. A 204-A 205).

Petitioner's tendered Instruction No. 7, refused, reads:

> "In determining whether defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not, I instruct you that the fact, if you find it to be a fact, that one or more of defendants' employees may have disliked or harbored ill will toward the plaintiff or may have made threats against him is completely irrelevant and is not to be considered by you in determining whether plaintiff has sustained his burden of proving that defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not." (P. Sep. App. p. A 229.)

(4) Court's ruling on threats and generic ill will expressions.

Thus the Court ruled that the threats were relevant to the issue of knowledge or reckless disregard, i.e., motive. This Court has held it essential to prove intent to inflict harm through falsehood. *(Henry v. Collins (1965) 380 U.S. 356, at 358; 13 L.ed (2d) 892, at 893).*

Where intent or design is relevant, evidence of threats, to do what the threatener did, and even generic threats, are admissible. Especially, when such intent and design is denied. *Wigmore on Evidence (3rd Ed., Sections 104, 5 & 6).* Prior publications tended to show generic ill will. But the Court restricted consideration of them to the issue of knowledge (R. pp. 2521, 33), as disclosed in the publications.

Petitioner cites no authority supporting its position. It enlarges the rule that ill will is not an adequate element, nor adequate proof of legal malice, into a rule excluding pre-publication threats to do what it did.

In no case where specific intent is at issue does the law exclude a litigant's pre-act threat to do the act. In this case, the specific intent Respondent was required to prove was Petitioner's intent to harm him with falsehoods. By the uncontradicted evidence, that is what Petitioner threatened to do, and did, and then boasted it had done.

The proper rule is too well settled to warrant granting certiorari to review it. It is the same question that was decided in *Goldwater v. Ginzburg (2nd Cir., 1969) 414 F. 2d 324,* cited by Judge DeBruler (P. App. p. 53a).

(F) ARGUMENT ON APPLICABLE LAW

Petitioner misconceives the extent of its constitutional rights. Supporting its Motion for Summary Judgment, Petition argued:

> "This, however, was not the main thrust of the *New York Times* case. The Court went much farther, to hold that the citizen's constitutional right to criticize is not limited to impersonal criticism of government. He also has a constitutional right to

> defame public officials *personally* with respect to their *official conduct.*" (Petitioner's emphasis) (R. p. 452 (o)

then added that even if the trial court rejected such de jure immunity, as stated by a minority of this Court, the majority had, nevertheless, prescribed a de facto immunity because the qualified privilege

> ". . . can be defeated only by certain proof, extremely difficult to come by, that the defamatory falsehood was published by defendant 'with "actual malice" . . . *that is,* with *knowledge* that it was false or with *reckless disregard* of whether it was false or not.'" (Petitioner's emphasis) (R. p. 452 (o)

Respondent agreed that evidence of another's state of mind is difficult to come by and was essential in his case against petitioner. He had assumed that burden by alleging:

> "3. For many months before the publication specified in Paragraph 12 hereof, defendants harbored actual malice toward plaintiff. Motivated thereby, defendants induced certain unveracious and supine persons, to furnish them with false statements, both written and oral, with the understanding defendants would not hold such statements in confidence but would publish same, as a facade for the basis of the defamatory matter specified in Paragraph 12 hereof. Defendants knew some of said statements were false and recklessly disregarded whether or not any of them were false."[1]
>
> "4. In the composition of the defamatory matter specified in Paragraph 12, defendants employed said false statements, so induced by them, and interlarded same with their own false and deceptive statements and comments, in some cases attributing

[1] Petitioner made no move to have stricken or modified the allegations of rhetorical paragraph "3.

> falsehoods of their own authorship to unidentified and mythical persons, dovetailing all together, link by link, and imprinted upon the whole composition, and the publication thereof, their own imprimatur." (P. Sep. App. pp. A172, 3).

However, Petitioner argued that the "difficult" burden was *indeed impossible unless Petitioner, itself, admitted its knowledge or reckless disregard.* It informed the court, by the common affidavit of 30 employees, agents and officers, that:

> "At no time prior to the publication of any of the exhibits attached to plaintiff's complaint (Exhibits 1 through 44 inclusive), did I have any knowledge that any of the following meanings which plaintiff alleges were conveyed by such articles was false, nor was I aware that any of such meanings was probably false. (For convenience, page and paragraph number of the complaint are given)." (R. pp. 435-452).[1]

This affidavit paraphrased *Garrison v. Louisiana (1964) 379 U.S. 64, at 75; 13 L.ed (2d 125 at 133.*

Petitioner then asserted:

> "This fact issue is completely covered by the affidavits to defendants' motion. These affidavits, executed by all persons having any responsibility for the composition and/or publication of the exhibits attached to plaintiff's complaint state that each of such persons, prior to the publication of each of such exhibits had no knowledge that any of the innuendoes alleged in plaintiff's complaint were false and was not aware that any of said innuendoes were false." (R. pp. 452 R & S)

and concluded:

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[1] This is the entire affidavit except that it then recites the meanings alleged in each of the 44 complaint paragraphs.

> "This case is a text-book example for the application of summary judgment. There is no point in this case proceeding to trial when it is apparent at the outset that this court will be required to direct a verdict for defendants for the reasons stated herein." (R. pp. 452 T & U).

Thus Petitioner postulates that on the issue of its state of mind, its own word is final. It has cited, and Respondent has found, no decision of any court embracing such a rule. This Court has held otherwise:

> "[7] The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." St. Amant v. Thompson (1968) 390 U.S. 727 at 732; 20 L.ed (2d) 262 at 267, 8.

The trial court overruled the motion (R. p. 572).

This ruling so clearly squares with St. *Amant* that there is no reason to grant certiorari to review it.

The evidence here shows that Petitioner went out *to get* Respondent, as was true in the *Goldwater* case. Petitioner

here, *as in Goldwater,* relies upon statements by others claiming an unrestricted right to publish such statements.[1]

The Second Circuit Court of Appeals decided that question in these words:

> "Citation of sources for most of the statements about Senator Goldwater in Part I of the "Goldwater issue" and the accurate reprinting in Part II of most of the original responses of psychiatrists to the *Fact* questionnaire, does not, as appellants appear to claim, insulate appellants from responsibility for any of the false statements they made. Reliance upon newspaper articles, books, and campaign literature, and upon accurate reprinting of another's letter are only factors which, with other factors, are probative of whether the publisher of the cumulated material was motivated by actual malice when he caused the full material to be published. Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports. *St. Amant v. Thompson, supra* at 732. Futhermore, in our case, Ginzburg added certain innuendoes to some quoted statements[19] and quoted other statements out of context[20] in order to support his predetermined result. One cannot fairly argue his good faith or avoid liability by claiming that he is relying on the reports of another if the latter's statements or observations are altered or taken out of context. Also, if Ginzburg's "melding" and "distillation" of letters results in misplaced emphasis, or exaggeration, or distortion, he cannot reasonably maintain that the mis-statements contained in the

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[1] See Petitioner's refused instruction (R. pp. 7596, 7) which would have told the jury "—I instruct you that defendants had no duty to check the accuracy or truthfulness of any accusation or statement before publishing it, whether it was made by a third person or by defendants.—"

new product he thereby created are not his own misstatements." Goldwater v. Ginzburg, (2nd Cir. 1969), 414 F. 2d 324.

No opinion of this Court, or any other Court, comes near warranting Petitioner's conception of its rights. This is a proper case for awarding Respondent damages under Rule 56(4), in a very substantial amount, with an option to petitioner to retract in which event the damage award would be remitted to the judgment appealed from.

Respectfully submitted,

BRUNNER, BROWN & BRUNNER
416 South Harrison Street
Shelbyville, Indiana 46176
Telephone: 317-636-0330

ELMON M. WILLIAMS
U. S. Highway 31 N & Meadows Drive
Greenwood, Indiana 46142
Telephone: 317-881-8284

ANDREW JACOBS, SR.
1503 North Pennsylvania Street, 13
Indianapolis, Indiana 46202
Telephone: 317-636-6044

Attorneys for Respondent.

APPENDIX

Johnson's call to Respondent November 18, 1964.

Respondent's testimony regarding Johnson's call was:

"A. Well he opened the conversation, he stated this was Rick Johnson. *He said you got a big thing going on there about secrecy and it caused us to miss this Lee Hines murder story.* I said, well I disagree with you, we don't have a big thing about secrecy, but I can explain to you why that wasn't released until it was. *And he says, no, that your policy of secrecy,* he said you by doing that, we missed a story, *The Star missed a story which it was entitled to. I said, well we can't schedule these crimes, when crimes are committed or cleared, in order to make deadlines on newspapers.* Rick said, he said well you had those people in there before our deadline, midnight last night. I said we had some suspects, that's true. We had not at that time charged anybody with murder, *we had not found the murder weapon. I explained to him that we felt that the murder weapon was very important element of the case and that had it been released, some of his confederates or associates might have possession of it or destroy the evidence,* and my policy at that time had been and continued to be that any pending investigation that if a

release of news would jeopardize that investigation, we would not release it at that time until it had been resolved. And he took the position that it was a bad policy, that's the wrong policy. *I explained to him that as far as I knew that every law enforcement ageney in the country either did have that policy or should have that policy.* I didn't know how he could argue with the policy. *I further stated that as long as I was Sheriff that would remain the policy on the Sheriff's Department.* He said, we'll see about that, and hung up." (Emphasis added) (R. pp. 6241, 2)

Johnson testified that his complaint was that:

"The apprehension were *never announced to us;* we were never informed about them, even though pickups were made well within the deadline edition time of the Star." (R. p. 7112) (Emphasis added)

Mr. Johnson did not deny any of the words Respondent attributed to him.

Johnson's call to Respondent December 3, 1964.

Respondent testified regarding the first midnight call to his home:

"I had another telephone call from Rick Johnson around midnight on December 3, 1964. He said: 'What the hell is going on down here?' I said: 'Who is this?' He said: 'This is Rick Johnson and I want to know what kind of shit is going on down here.' I said: 'Down where? What are you talking about?' He said: 'Down at your office. I'm getting jacked around down here on a case and I'd like to know what's going on.' I said: 'Well, what's it about, Rick.' He said: 'It involved a couple of shoplifters.' I said: 'Well, you hold on a minute.' I had two lines in my home so I could call the office when I got inquiries of this nature. I said: 'If you'll hold on a minute, I'll see what the trouble is.' Johnson said: 'You better

damn well find out what the problem is.' I said: 'Just cool off a little bit, we'll get this straightened out.' He said: '*By God, I'm going to put you on the front page of the paper if you don't get this straightended out.*' I said: 'Just explain to me what the problem is, I don't even know what you're talking about. I don't know anything about this case. If you'll hold on I'll check it.' And he said, he repeated this, and he was very profane. He kept this up and wouldn't let me call and said: 'You'd better straighten up,' and repeated that again about the front page of the paper, and said: '*By God, you'd better shape up.*' When Johnson said that, I got mad and lost my composure. I said: 'Well, if that's your attitude, if you're not going to be reasonable about this, you can go to hell. Another thing; you're shut off from the news down there until we get this straightened out. You go tell your boss you're off this beat. You tell him he can send any other reporter from the Star down there and they'll get treated like anybody else, but not you. I don't have to put up with that kind of abuse from you.' And we both hung up." R. pp. 6244, 5) (Emphasis added)

Johnson's Call to Respondent December 4, 1964.

Regarding the December 4th conversation, Respondent testified:

"Well he opened the conversation, he said 'This is Rick Johnson,' he says 'Are you serious about banning me from getting news down at the Sheriff's Office?' I said, 'Yes, I'm serious about it.' He said, 'You don't think you can get away with that, do you?' I said, 'Well, unless we get this thing straightened out, that's the position I'm gonna take.' I says, 'As a private individual, I don't intend to be talked to like that, and I don't think the public official . . . being a public official makes it necessary to take that kind of abuse from you.' He says, '*Well, I'm gonna keep you on the front page of the newspaper*

just as long as it takes.' I said, 'Rick, you do what you have to do, I'll do what I have to do.' He said, 'That's what I'm gonna do' and he says 'I'm gonna expose you for what you really are.' I says, 'Well, what is that?' He says, *'You're a stooge of Noble Pearcy. I'm gonna keep you on the front page of the —gonna keep you in headlines on the front page as as long as it takes.'* And hung up." (Emphasis added) (R. pp. 6247, 8)

Johnson's Call to Respondent December 5, 1964.

Johnson again telephoned Respondent at home around midnight on December 5, 1964. Respondent testified:

"Well he said, 'This is Rick Johnson.' He said 'I want to know . . . what to check to see if that ban on me getting news down here is still on.' I says, 'Yes, it certainly is.' He says, 'I thought you'd be interested in the fact that I'm sitting down here in the office now going through these reports.' I said, 'Who's the Officer on duty?' He said, 'Lieutenant French.' I said, 'Will you kindly put him on the telephone, I said 'Does Rick Johnson have the reports down there?' And he says, 'Yes.' I said, 'He's under ban of news, so you take those reports away from him, and he's under ban.' And I asked him why he gave them to him, and he said he had been on vacation and didn't know about it. He'd just went on duty that night. So I told him to put Rick back on the telephone, and he came on, and I said, 'Rick, I just told French to take those reports away from you and the ban will continue until we get this thing straightened out, you are to act like a human being.' And he says, 'Well, I told you what I was going to do. *I'm gonna keep you on the front page of the paper as long as it takes to shape you up.'* He said, 'I want you one other thing.' I said, 'What's that?' And he says, *'You remember what happened to your predecessor . . .'* (Respondent's predecessor was

Sheriff James O. Hiner, who died of ulcers). (R. pp. 6248, 9) (Emphasis added)

Hiner, Difficulties with Star.

Sheriff Hiner had also had difficulties with Petitioner once over "the forced resignation" of a Sheriff's Lieutenant because—well, let Petitioner speak for itself:

"BEHIND CLOSED DOORS

"SHERIFF'S OFFICE MORALE SO LOW"

"By the Star City Staff

"Morale in the Marion County Sheriff's office reportedly has dipped to such a low that 20 deputies are said to have applied for appointments to the Indianapolis Police Department.

"The 20 deputies, all in the sheriff's law enforcement division, represent almost a third of the law enforcement force for Republican Sheriff James O. Hiner.

"The deputies are mad because:

1. *They feel the forced resignation of Lt. Leroy Thompson by Hiner was 'too rough.' Thompson was caught in an alleged house of ill fame—his first mistake in six spotless years of service. . . .*" (R. p. 4764)

Son-of-a-bitch, "will get" or "kill".

Johnson told Prosecutor Pearcy, referring to Respondent:

"I'm going to get the son-of-a-bitch and he'd better remember what happened to is predecessor." (R. p. 4142)

During this period, Virginia Wilkes, the law librarian at the City-County Building, heard Johnson call Fields an S.O.B. and say that if it took a year he would get even with him. (R. pp. 6925, 7)

and Johnson said to Winston Churchill, an Indianapolis police sergeant, about Fields: "I'll kill the son-of-a-bitch. Politically, I'll kill him." (R. pp. 6696, 7)

Shooting for Real Trouble or be Made to Look Good in Public's Eye (Dec. 6, 1964).

"FIELDS' MUZZLING HOLDS UP NEWS"

"Marion County Sheriff Robert H. Fields *is shooting for real trouble* with a policy of muzzling his employees, as illustrated by the ridiculous situation last week when a jail matron refused to give a reporter the names and similar information on two women under arrest on shoplifting charges.[1]

"'I am not permitted to speak with reporters,' the dutiful employe stated. Fields claims he has told his workers they can disclose 'routine' information—but naturally some of them are going to play it safe by saying nothing, when the boss has a big thing about secrecy.

"*Recently, Fields' deputies did some outstanding police work, making three arrests within four hours after a beaten man's body was found in Big Eagle Creek. But he and they missed a chance to look good in the public's eye. The arrests were not disclosed that day. 'I didn't authorize it,' Fields says.*" (R. p. 4139) (Emphasis added)

Connor, Editor, Knew What Controversy was (Dec. 7, 1964).

The next day, December 7th, Respondent phoned Petitioner's City Editor, Lawrence Connor. Of this he testified:

"Q. Tell us about the conversation with Mr. Connor.

"A. He was aware of the controversy between Rick and I and aware of the fact that I had banned him from news down there and I tried to explain to him the reason for that.

[1] Johnson had the arresting officer's report in his hand while talking to Respondent. It contained all the information available (R. pp. 5086, 92)

"Q. Just tell the Jury what you said to him and what he said to you.

"A. Well, I told him about the Lee Hynes Murder Case and the shoplifter case, and explain(ed) my side of it, just as I've told here, and he said, he told me . . . he said, no you apparently got a policy of secrecy down there, you're not releasing news when you should, and he didn't agree that this policy that I explain to him was a proper policy, and he went right down the line . . . it was Rick Johnson's right, in the position he took with me, and at that time, that was the conversation. I concluded there was no point in continuing the conversation." (R. p. 6252)

About January 15, 1965, Prosecutor Pearcy, acting in the role of peace maker, arranged a dinner with Respondent and Johnson. Respondent testified regarding this.

"Well in substance he said we had this bad policy down there on news and in substance I told him that I was convinced that it was the only proper policy, we both gave our sides of the same controversy and discussed it in a friendly manner. However, we both admitted that we previously had flown off the handle probably a little premature, our attitudes and we wanted to shake hands and I told him even though we, in effect, we agreed to disagree on this particular matter as long as I was satisfied that he could discuss it like a reasonable man that I told him that I'd go ahead and lift the ban on him, which I did." (R. p. 6261)

Son-of-a-bitch Kissed Book.

After this, Detective Sergeant Felson Bowman testified he saw Johnson and said to him, "Well, I see you and my boss are getting along now," and Johnson replied, "Well, the son-of-a-biteh kissed the book." (R. pp. 3343, 5)

Killed the Wrong Man (Aug. 11, 1965).

"Haine said it was known that Johnson gave Sheriff's Lt. Marvin Pope information which led to the arrest of William S. Mobley, Malcolm W. Clark, Jr., and Fred Roberts on robbery charges last Feb. 19." ("Feb. 1964, not "last Feb.")

"Gang members believed a man named Lee S. Hynes was responsible for the tipoff. He was slain Nov. 17, 1964.

"'*But they killed the wrong man,' Haine said.*" (Emphasis added) (R. p. 2506)

Haine Framed (Aug. 20, 1965).

August 20, 1965, Petitioner editorially stated,

"The sergeant, Charles W. Haine, says he was 'framed' and that the sheriff was 'used' to frame him. Haine's claim still stands. It has not been disproved. It still hangs like a cloud over the department. The sheriff's 2,000-word 'press release' did not disprove it." (R. p. 2539)

Not one word was ever quoted from Respondent's reply to the "How About Some Answers?" editorial. But City Editor Connor was questioned about the above paragraph.

"Q. Wait a minute. We are not talking about supposition. Robert H. Fields, Sheriff of Marion County, made the statement that he had the serial numbers on ten $20 bills, which he provided to a man of ill-repute who had been convicted of misdemeanors and suspected of felonies, who said he was being shook down by Haine, and then Robert H. Fields, Sheriff of Marion County, said that he concealed himself, with his Major, and saw Haine and this man of ill-repute, Leon Johnson, meet at a filling station briefly, whereupon he went over, as Johnson left, and stopped Haine and took those same ten $20 bills out of Haine's right-hand pants pocket?

"A. Right.

"Q. *All right. Now, Mr. Connor, what I want you to explain to me is: Why was there something for the Sheriff to explain rather than something for Haine to explain, when Haine claimed he was framed?*

"A. Let me see. I couldn't say. I don't know. I didn't write it.

"Q. Doesn't anything occur to you?

"A. Not at the time.

"Q. It doesn't to me either. What evidence do you have, other than Haine's naked word that he was framed, or what claim did Haine ever have except his naked word that he was framed?

"A. *We didn't have anything else. We just reported what he said.*" (Emphasis added) (R. pp. 5865, 6)

It is true that Petitioner had well reported it before. But this was an editorial.

Johnson's Version of First McAdams Meeting (Oct. 21, 1965).

"A. The first thing that happened was McAdams was placed into Judge Fife's Jury Room with me. We were alone. I introduced myself, told him I had received information from Deputy Cottey that he wanted to talk to me. I said, 'Bud's a good friend of mine,' I said, 'How are you with Bud?' He said, 'Bud and I are fine, and I do want to talk to you, but not until I get out of Jail,' and I said, 'Well, what's it about? Can't you give me an idea?' and he says, 'Not till I get out of Jail,' so we, more or less (had a) general discussion, what you could call a 'feeling out process," I suppose, having just met each other. He told me he had worked as a boat builder some-

where in Illinois, had worked on fiber glass boats; that he was a barber by trade; that he had got a bum rap when he was convicted of theft of barber shears, that he hadn't actually stolen, he just forged a name when he hocked them. That was immaterial, so we talked for a few more minutes, and I said, 'I heard a story; I want to tell you.' So I told him that I heard that Deputy Donovan King had beaten an inmate by the name of Reagan, while this man was in solitary confinement, and had then tear-gassed him and then beat him again, and the man was later taken to the Hospital and ultimately died. I finished repeating that to him, and I said, 'Well, what do you have to say about it?' All he said was, 'That's a pretty good story.' I said, 'You mean you're not going to confirm or deny it?' He said, 'No,' I said, 'Well, will you tell your story to the Judge?' He said, 'Yes, I'll tell it to the Judge.' So at that time, I believe I left the Jury Room and went outside to see if Judge Fife was there.'

"Q. About how long did that meeting take place between you and Mr. McAdams?

"A. Well, I didn't keep any record of the time. My best estimate would be no more than thirty minutes, possibly less, because I didn't attempt to keep track of the time.

"Q. All right, then what happened when you went to see the Judge?

"A. The Judge wasn't in, and it would be some time until he did come in and reconvene Court, according to his Bailiff, Mr. Patterson. I went back into the Jury Room for a few moments and told Mr. Adams this, asked him if I could bring him a sandwich or some cigarettes. He said, 'No, I'm not hungry, and I've got a smoke,' and we might have had another conversation at that time regarding what would happen to him if he did talk. He wanted to know if he could get out of Jail, and I said, 'There

are a number of things; there could be probation; time could be cut to time served. There's any number of things that could happen, but that is not up to me. That's *up to the Judge; and it all depends upon what you have to say.'* He made no comment on this. He still wanted to talk to the Judge, and at that time I left him in the Jury Room and I believe Deputy Hall then placed him from there into the Lockup.

"Q. Did you later that day then, meet with Judge Fife?.

"A. Yes.

"Q. What happened then?

"A. I introduced McAdams to the Judge and told him that McAdams had a statement to make to him, and Judge Fife said, 'Well, what is is?' and McAdams said, "I seen a deputy beat a guy to death in the Marion County Jail,' and Judge Fife and I, more or less alternated asking the questions at that time, and Judge Fife fixed the approximate date, I believe, and it was at this time that McAdams split the information I had received originally from Deputy Atwell into two separate incidents instead of one incident, as I had been proceeding on.

"McAdams said that Reagan was not tear-gassed; that Mr. Reagan was beaten after an argument with the deputy over some medicine. Mr. McAdams made the tear gas episode a completely different incident and placed it on a completely different person at a later time. Now the statement, the written statement, which was taken the next day is probably the best record of what McAdams said regarding those two incidents." (R. pp. 7165, 8)

This statement is in the record (General Exhibit 237A; (R. p. 2595)

Also, this is Johnson, on cross, clearing up some omissions from his direct examination at the trial:

"A. I told the Judge that this man had something he wanted to say, that he didn't want to talk to just me, that he wanted to talk to the Judge. I said, 'I'm not certain what it is but I'd like for you to hear it.'

"Q. Didn't you say to the Judge at that time, "I think he's got a murder"?

"A. It's possible I did.

"Q. All right. Then you and McAdams were in the Judge's chambers and you had a talk, and you have testified to that on your direct examination. Can you think of anything else that was said there, that you didn't tell us on direct examination?

"A. At this moment, I don't.

"Q. Let me see if this refreshes your recollection.

"A. O. K.

"Q. And the fact that McAdams made the statement, and it was brushed under the rug, '*it could only lead to having a new Sheriff*. (Emphasis added) (R. p. 7324)

"A. Yes, sir, I thought that was brought out on direct examination." (R. p. 7325)

Excerpts From All Complaint Exhibits (Oct. 27 through December 28)

The following panoramic view of publication paragraphs discloses who appellant made the villain in the public eye. For 41 days each publication mentioned Reagan or Crick, or both. The central theme was the fabrication appellant put in McAdams' mouth.

Following are, one or more, paragraphs from each of the 44 Complaint Publications, with emphasis added:

October 27th (No. 1) Classification 1.

"Pearcy met for 25 minutes with Sheriff Robert H. Fields to inform him of the charges. *Fields was visibly shaken* when he left the meeting. He said he would follow 'whatever course is necessary to get to the bottom of this.' 1-14-4-2 (R. p. 43)

The tipster gave Johnson the name of the deputy and some advice:

"Don't start nosing around the jail. *They (the prisoners and deputies) are scared to death.* No one dares to talk about it." 1-1-7-8 (R. p. 44)

October 28th (No. 2) Classification 2.

"*Fields said he received a repudication* of the missing man's signed statement that a jail deputy was responsible for the beating, after his deputies grabbed the man and brought him to the sheriff's department before and after he testified before the Grand Jury. 2-1-5-6 (R. p. 45)

"*Pearcy said he saw nothing irregular about Fields questioning McAdams* before and after the grand jury testimony and Fields said he considered this within his rights. 2-7-3-9 (R. p. 45)

"McAdams agreed to meet with Pearcy yesterday to take a polygraph (lie detector) test but failed to appear and could not be located." 2-7-3-7 (R. p. 45)

"*Fields and Pearcy* are close political and personal friends." 2-7-4-11 (R. p. 45)

"Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history." 8-1-7-2 (R. p. 47)

"*Now Sheriff Robert H. Fields* says he has obtained a 'repudiation' of the witness's original ac-

count of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What would induce the witness to change his story?" 2-1-7-11 (R. p. 47)

"Irregularities in the Marion County sheriff's department, climaxes with the controversial death of a prisoner, have become almost commonplace during the last year." 2-7-3-1 (R. p. 48)

"Most were kept secret from the public until dug out by newspapermen." 2-7-3-2 (R. p. 48)

October 29th (No. 3) Classification 2.

"In yesterdays' hearing, Fife blasted Prosecutor Noble R. Pearcy for his handling of the case. The judge asked Pearcy if, in view of the *close personal relationship between the prosecutor and Sheriff Robert H. Fields*, he would rather step aside in the case. 3-14-5-4 (R. p. 49)

"'Absolutely not,' Pearcy answered. 3-14-5-5 (R. p. 49)

"It seems odd to us that Prosecutor Noble Pearcy should see nothing wrong in the fact that deputies from the sheriff's office and *the sheriff himself* should call a chief witness, who had appeared before the grand jury for interrogation, and get a retraction of his grand jury testimony from him." 3-1-7-6 (R. p. 50)

"Another question: *If the sheriff and his deputies had nothing to fear from* a grand jury investigation, if they know that they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence? It makes you wonder, doesn't it?" 3-1-7-8 (R. p. 50)

October 30th (No. 4) Classification 2.

"*Fields said McAdams repudiated the statement* he gave The Star during questioning after his grand jury testimony Tuesday. Pearcy declined to say when McAdams repudiated his statement." 4-17-1-11 (R. p. 51)

October 31st (No. 5) Classification 5.

"The statements by the prisoners were the latest chapter in the mushrooming story of apparent brutality in the jail which has been unfolding since The Indianapolis Star started an investigation into the death of Elmer L. Reagan." 5-12-4-2 (R. p. 53)

November 1st (No. 6) Classification 4.

"The jury has been investigating jail brutality since The Indianapolis Star revealed last week that one inmate, Elmer L. Reagan, who died in Marion County General Hospital of pneumonia caused by a beating, allegedly was attacked by a deputy." 6-1-7-5 (R. p. 54)

November 2nd (No. 7) Classification 2.

"Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted." 7-1-8-6 (R. p. 55)

"The stepped-up protection for witnesses came after *Sheriff Robert H. Fields and deputies seized* one witness last week and questioned him before and after he appeared before the grand jury." 7-1-8-7 (R. p. 55)

November 3rd (No. 8) Classification 2.

"*Sheriff Robert H. Fields said McAdams later repudiated* the statement during questioning by the sheriff and deputies, but McAdams' girl friend, Mrs. Lura Kimbley, said McAdams told her he was given

whiskey during the interrogation." 8-18-3-8 (R. p. 56)

November 4th (No. 9) Classification 2.

"McAdams told of Reagan's beating to the grand jury. Then he was picked up by deputies, *interrogated, and, according to Sheriff Robert H. Fields, repudiated his original statement.*" 9-12-2-1 (R. p. 58)

"Reagan was beaten July 14, and died Aug. 7." 9-12-2-2 (R. p. 58)

November 5th (No. 10) Classification 3.

"Reagan died Aug. 7 of pneumonia brought on by the beating and 12 broken ribs. McAdams repudiated his statement after he *was questioned by sheriff's deputies* before and after his grand jury testimony Oct. 26." 10-14-4-5 (R. p. 60)

November 6th (No. 11) Classification 3.

"Thomas was the second witness to come forward to corroborate the account which McAdams first gave in a notarized statement, then repudiated after he had been *questioned by Sheriff Robert H. Fields' deputies.*" 11-1-1-3 (R. p. 67)

"'I think McAdams was threatened or scared and that's why he changed his story,' Thomas said." 11-23-1-8 (R. p. 61)

November 7th (No. 12) Classification 2.

"Then he disappeared.

"The following day, Sheriff *Robert H. Fields, under whose jurisdiction the jail is run, declared the missing man had repudiated his statement.*" 11-2-1-11 (R. p. 63)

November 8th (No. 13) Classification 3.

"McAdams later repudiated the statement after he was *questioned twice by Sheriff's deputies,* once before and once after his grand jury appearance." 13-21-4-7 (R. p. 64)

November 9th (No. 14) Classification 2.

"McAdams repudiated the statement after *he was questioned by Fields and deputy sheriffs* both before and after he appeared before the Marion County Grand Jury to testify in the case." 14-1-2-2 (R. p. 65)

November 10th (No. 15) Classification 2.

"McAdams later repudiated the statement after *he was interrogated by Fields and his deputies,* but since then four persons have stated that McAdams had told them about Reagan being beaten by a deputy." 15-10-3-6 (R. p. 66)

November 11th (No. 16) Classification 4.

"Neville, in a notarized statement to The Star, stated he had seen an 'old man' in the basement cage last July who was pushed against a wall by a deputy and fell unconscious." 16-1-8-11 (R. p. 68)

November 12th (No. 17) Classification 4.

"Neville selected Crick's photograph from among 10 Indianapolis Police Department 'mug shots' yesterday in the presence of five State Farm security guards, including Maj. Robert Garrison and Capts. Charles A. Thompson and James Lyon. Crick's photograph had not previously appeared in newspapers." 17-1-3-4 (R. p. 69)

November 13th (No. 18) Classification 2.

"McAdams appeared before the Marion County Grand Jury Oct. 26, but he was taken to the sheriff's office in the jail both before and after the jury

appearance and *questioned by Fields and deputies.*" 18-1-5-11 (R. p. 71)

"McAdams subsequently repudiated his original statement. But more than a dozen other prisoners later gave statements indicating brutality at the jail." 18-1-6-3 (R. p. 71)

November 14th (No. 19) Classification 4.

"However, evidence that his death Aug. 7 in Marion County General Hospital resulted from a beating at the hands of deputies instead of a mentally ill inmate put his name into public conversation to a degree he never enjoyed in life." 19-1-5-2 (R. p. 72)

November 15th (No. 20) Classification 3.

"McAdams later repudiated the statement after he was *seized by sheriff's deputies and interrogated twice.* He then was rearrested and was made a jail trusty. However, at least four persons have stated that McAdams told them of Reagan's beating." 20-1-5-4 (R. p. 73)

November 16th (No. 21) Classification 4.

"About 120 persons have testified before the jury since the jail brutality probe started after another inmate signed a statement charging that Elmer L. Reagan, held on a drunkenness charge, was beaten and kicked by a jail sergeant several weeks before he died Aug. 7 of pneumonia brought on by beating injuries." 21-16-4-6 (R. p. 74)

November 17th (No. 22) Classification 2.

"In the current investigation, *Sheriff Robert H. Fields ordered his deputies to pick up and question the inmate,* Charles P. McAdams, who had signed a statement that Reagan was beaten by a jail sergeant." 22-28-5-2 (R. p. 75)

November 18th (No. 23) Classification 4.

"Reagan died of pneumonia brought on by beating injuries. According to Charles P. McAdams, another inmate, Reagan was beaten by a jail sergeant. McAdams later repudiated the charge but four persons said McAdams told them he had seen a deputy beat a prisoner who later died." 23-16-4-5. (R. p. 76)

November 19th (No. 24) Classification 3.

"However, McAdams repudiated his statement after he *was picked up and questioned by deputy sheriffs* before and after his testimony before the grand jury." 24-31-6-7 (R. p. 77)

November 20th (No. 25) Classification 6.

"Elmer L. Reagan and Danner Crick, the two men whose deaths in the jail are being probed by the jury, both had serious drinking problems." 25-12-3-4 (R. p. 78)

November 21st (No. 26) Classification 5.

"The County Grand jury is expected to make a special report Tuesday on its findings in its extensive investigation into alleged brutality in the County Jail." 26-23-3-4 (R. p. 79)

November 22nd (No. 27) Classification 5.

"A total of 129 witnesses have been heard by the jury in its investigation of two jail deaths and inmates' charges that they were beaten by deputies." 27-1-5-2 (R. p. 80)

November 23rd (No. 28) Classification 5.

"New York City—Robert F. Squillan said yesterday he threatened the life of President Lyndon B. Johnson in order to avoid return to Indiana and possible imprisonment in the Marion County Jail." 28-1-7-1 (R. p. 81)

"In a notarized statement to his attorney, William C. Erbecker, Squillan reported he was threatened and harassed by an investigator for the Sheriff's department to the extent that he 'blew my top.'" 28-1-7-2 (R. p. 81)

"Squillan's statement came on the eve of a Marion County Grand Jury report on charges of brutality at the jail which is scheduled to be returned this morning." 28-1-8-1 (R. p. 81)

November 24th (No. 29) Classification 7.

"Criticism mounted last night in the wake of a Marion County Grand Jury report which 'exonerated' the sheriff's department of brutality charges."

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, *charged the report was a 'whitewash' of the situation at the county jail.*" 29-1-5-1 (R. p. 82)

"McAdams repudiated his original statement after he was questioned at length at the sheriff's office both before and after his appearance before the grand jury. 29-12-1-3 (R. p. 82)

"*Marion County Prosecutor Noble R. Pearcy and Sheriff Robert H. Fields are close personal friends and political allies.* 29-1-5-6 (R. p. 82)

"The Prosecutor's office assists and guides the jury throughout its investigations and consequently can play an enormous part in determining the direction any probe will take and its conclusions." 29-1-5-7 (R. p. 82)

November 25th (No. 30) Classification 7.

"All six members of the Marion County grand jury petitioned to be dismissed yesterday because of 'attacks upon our integrity and character.' 30-1-6-1 (R. p. 84)

"The jurors referred to criticism from Judge Eugene M. Fife Jr. of Criminal Court, Division 1. 30-1-6-2 (R. p. 84)

"Judge Fife had termed the jury's report on alleged brutality at the Marion County Jail a *"whitewash."* 30-1-6-3 (R. p. 84)

"The plan was proposed following the Marion County Grand Jury investigation of alleged brutality in the county jail. The jury exonerated the sheriff's department, but Fife called the panel's report a *'whitewash.'"* 30-1-7-7 (R. p. 85)

November 26th (No. 31) Classification 3.

"McAdams repudiated his statement after he was questioned twice by the Sheriff's department, once before and once after his grand jury appearance. McAdams now is a 'trusty'—a privileged prisoner—at the jail." 31-14-7-1 (R. p. 86)

November 27th (No. 32) Classification 7.

"Fife had said the grand jury has been 'just an adjunct of the prosecutor's office.'

"Fife earlier had termed the report a *"whitewash of the charges against the deputies of Sheriff Robert H. Fields, who is a close personal and political friend of Prosecutor Pearcy."* 32-1-5-1 (R. p. 88)

November 28th (No. 33) Classification 7.

"The Marion County Grand Jury's report on the jail was termed a *'whitewash'* by Judge Fife, other public officials and some local leaders. Judge Fife said he did not blame the jurors, calling them *'the victims of a whitewash manipulation staged by the prosecutor's office.'"* 33-1-8-8 (R. p. 89)

November 29th (No. 34) Classification 7.

"Judge Fife said he did not blame the jurors, calling them 'the victims of a *whitewash manipulation staged by the prosecutor's office."* 34-1-5-5 (R. p. 90)

November 30 (No. 35) Classification 7.

"Fife asserted:

"I don't blame the grand jury for the *whitewash. I lay the blame on the prosecutor's office. It is no secret that Prosecutor Pearcy and Sheriff Fields are close personal friends and political allies.* And I believe that the record will show Mr. Pearcy was influential in having Fields appointed sheriff." 35-1-8-8 (R. p. 91)

December 1st (No. 36) Classification 5.

"Marion County Sheriff's Sgt. Donovan L. King did not resign from the department because of the grand jury probe of alleged county jail brutality, Sheriff Robert H. Fields said yesterday." 36-1-2-1 (R. p. 92)

December 3rd (No. 37) Classification 7.

"The jury's report, which exonerated the sheriff's department of the brutality charges, was termed an 'obvious *whitewash*' by Judge Eugene M. Fife, Jr. of Marion Criminal Court, Division 1. He charged that the *prosecutor's office had steered the members of the grand jury in their investigation.* 37-1-5-2 (R. p. 93)

"McAdams's statement was turned over to the grand jury by Gaither who began an investigation. McAdams repudiated his statement after he was questioned by sheriff's deputies before and after his grand jury testimony." 37-11-8-3 (R. p. 93)

December 11th (No. 38) Classification 7.

"But the inmate repudiated his statement after he was questioned before and after his grand jury testimony by sheriff's deputies. 38-23-2-2 (R. p. 94)

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, termed the grand jury report an obvious '*whitewash which had been steered by Prosecutor Noble R. Pearcy to protect his friend and political ally, Sheriff Robert H. Fields.* 38-23-2-5 (R. p. 94)

December 15th (No. 39) Classification 7.

"The report was termed an *obvious whitewash* by Judge Eugene M. Fife Jr. of Marion Criminal Court, Division 1. Fife said the grand jury had been *steered to its conclusion by Prosecutor Noble R. Pearcy, friend and political ally of Sheriff Robert H. Fields.*" 39-1-3-3 (R. p. 95)

December 18th (No. 40) Classification 3.

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, yesterday ordered Charles P. McAdams to serve the remainder of his six-month jail term at the Indiana State Farm, *for his own safety, after denying his request for release.*" 40-27-4-1 (R. p. 96)

"McAdams, 35 years old, triggered an investigation of the Marion County Jail in October, when he signed a statement in which he said he saw a deputy sheriff beat a prisoner, Elmer L. Reagan, 50, who later died. 40-27-4-2 (R. p. 96)

"Judge Fife freed McAdams on Oct. 25, commuting a six-month sentence for violation of the Offense Against Property Act, to time served. *McAdams, however, repudiated his statement after he was questioned by sheriff's deputies before and after his testimony before the grand jury, and Fife ordered McAdams' jail term reinstated.* 40-27-5-1 (R. p. 96)

"In yesterday's habeas corpus hearings, McAdams' attorney, William C. Erbecker, attacked the reinstatement of the sentence by Fife, saying once the judge had altered the commitment to time served, the judge no longer had power to reinstate the sentence. 40-27-5-2 (R. p. 96)

"Fife overruled the point. However, he said that, *due to reports he had received that McAdams feared for his safety in the jail, he was going to order him to serve the remainder of his term at the State Farm.* 40-27-5-3 (R. p. 96)

"McAdams is eligible for release in February." 40-27-5-4 (R. p. 96)

December 23rd (No. 41) Classification 7.

"The jail inmate later repudiated his statement. The jury investigated jail conditions four weeks and then exonerated the sheriff's office and indicted Brown in a special report. 41-8-3-14 (R. p. 97)

December 24th (No. 42) Classification 7.

"The grand jury conducted a four-week probe of jail conditions and in November exonerated the sheriff's office and indicted Brown." 42-11-8-5 (R. p. 98)

"The report was described as a '*whitewash*' by Judge Eugene M. Fife Jr. of Criminal Court, Division 1." 42-11-8-6 (R. p. 98)

December 26th (No. 43) Classification 7.

"After hearing jail brutality (43-1-1-13) charges by more than a dozen prisoners and listening to 129 witnesses, the grand jury declared that the sheriff's department was not guilty of wrongdoing. The finding touched off widespread charges of a grand jury '*whitewash*.'" 43-1-2-1 (R. p. 99)

December 28th (No. 44) Classification 7.

"The grand jurors had become angry because Judge Fife criticized their special report, which he termed a '*whitewash*' of alleged brutality in Marion County Jail." 44-1-3-4 (R. p. 100).

Complaint Exhibit excerpts classified.

It was in No. 29 that the code word "whitewash" was adopted and defined as it was later used in the series of publications.

We have classified these paragraphs with code numbers 1 through 7 in the upper right hand corner. In the following analysis, the classification number is in parentheses.

(1) One said Respondent was shaken.

(2) Eleven said Respondent questioned McAdams, which, in context, was equivalent to intimidation.

(3) Seven said Respondent's deputies questioned McAdams.

(4) Six said a deputy or deputies killed an inmate.

(5) Five said jail brutality was under investigation.

(6) One referred to the two men whose deaths were being probed.

(7) Thirteen used the term "whitewash," the groundwork for which was laid in Nos. 3 and 4, as the Prosecutor protecting Respondent from the clear accusations admitted by Pulliam, then clearly defined with that code word in Nos. 29, 32, 33, 34, 35, 37 (a recovery publication), 38 and 39).

Every publication recovered upon, and most of them in between, had a reference, in context, to the original accusations. The questioning referred to was on October 26th, no other time. Other charges of "brutality" were related to the King-Reagan case. For example, see No. 12 (R. p. 63) (P. Sep. App. p. A 60).

Eleven times Petitioner published that Respondent personally participated. Seven times it was said "the" or "Fields'" deputies did.

The Reagan Case—Uncontradicted Evidence.

There is not a shred of evidence in this record that anyone, other than William A. Brown, ever beat or kicked Elmer Reagan. Nor is there a shred of evidence in this

record that anyone, other than Charles McAdams, ever said Sgt. King or any person, other than Brown, did. If there is, we challenge Petitioner to cite same.

Sgt. Robert Smith, Deputy Burris and Deputy Kirkman all testified that trustys called them, about 6:45 A.M., July 14, 1965, in the heat of the fray, saying Brown was attacking Reagan; that they rushed down to the basement cage and shackled Brown.

All this testimony is adequately summarized, so we will merely cite the record for the testimony of these witnesses on this subject.

Sgt. Robert Smith: Regarding the actual fray: (R. p. 2160, 3; 2168); on cross-examination: (R. pp. 2215; 2217, 8; 2220, 30). On re-direct: (R. pp. 2235; 2241, 6).

Deputy James Burris: Regarding the actual fray: (R. pp. 2253, 7); on cross-examination: (R. pp. 2257, 73); on re-direct: (R. pp. 2273, 80); on re-cross: (R. pp. 2280, 2). On final direct: (R. p. 2283); final cross: (R. pp. 2283, 4).

Deputy Robert Kirkman: Regarding the actual fray: (R. pp. 2446, 51); on cross-examination: (R. pp. 2451, 63).

Four of the trustys were called as witnesses to the attack:

Otis Maier: Regarding the actual fray: (R. pp. 2866, 71); on cross-examination: (R. pp. 2871, 79); on re-direct: (R. pp. 2879, 80).

Joseph Winburn: Regarding the actual fray: (R. pp. 6928, 33); on cross-examination: (R. pp. 6933, 48); on re-direct: (R. p. 6948); on re-cross: (R. pp. 6948, 9).

George Cox: Regarding the actual fray: (R. pp. 2843, 49); on cross: (R. pp. 2849, 66).

Emmett Smith: Regarding the actual fray: (R. pp. 2880, 84); on cross-examination: (R. pp. 2884, 98).

The Eye Witness Testified Before the Grand Jury.

These are the 7 witnesses called in this case who testified to any first-hand knowledge of how Reagan was injured.

Reagan case—already before Grand Jury before first libel publication (Sept. 9 to Oct. 25), and future witnesses.

Prior to the first accusatory publication, October 27th, the following witnesses had testified before the Grand Jury: Vanis York, September 9th; Joseph Winburn, September 28th; Sgt. Robert Smtih and Sgt. James Mellene, September 9th; Orlando Paff was subpoenaed for September 29th and October 25th, but did not appear (General Exhibit 297B; R. p. 4059). After October 27th, the additional witnesses were called (General Exhibit 297A, 13 pages; R. p. 3993). At the name of each witness we will give the date of his appearance and his number on the witness list for that day:

William A. Brown, November 12, 1965; 1st witness
James Burris, November 1, 1965; 3rd witness
George Cox, November 2, 1965; 1st witness
Robert Kirkman, November 1, 1965; 4th witness
Otis Maier, November 2, 1965; 2nd witness
Sgt. Robert Smith, October 29, 1965; 3rd witness
Emmett Smith, October 27, 1965; 13th witness.

Furthermore, Petitioner had known there were eye witnesses since August 14, 1965 (General Exhibit 184, par. 5; R. p. 2541).

Reagan to hospital in daylight, not wee, dark hours (July 14, 1965) and Petitioner's knowledge of this.

Petitioner narrated these 35 pages on a ratio of 1 to 28, whereas its direct examination of Mr. Johnson was on a ratio of 1 to 3.4. Nevertheless, we will use Petitioner's narration on this point:

"In McAdams' statement about Deputy King beating Reagan, he fixed the time of the first beating about 6 P.M. and the second at about 7:30 P.M. McAdams then said that about 10:45 P.M. King brought Reagan to the Attorney's Cage and hit him and kicked him again, and that Reagan was still laying there about 1:30 A.M. the next morning, when McAdams went to sleep. This was in the evening of July 14 and the morning of July 15." (R. p. 7196, 7201).

"Plaintiff's Complaint Exhibit 12 (R. p. 3569), an article published in the Star on November 7, 1965 and written by me on November 6, 1965 states that: 'McAdams, who later repudiated his story after questioning by deputies, originally maintained that Reagan was first struck at 6 P.M., July 14th. Records show Reagan was taken to the hospital at 5:09 P.M., July 14th. Did McAdams tell the truth, but make a mistake about the time or day? Or did he make up the story.' I probably learned about this inconsistency in McAdams' statement on Thursday, November 4 or Friday, November 5, from the hospital records. I probably told either Mr. Connor or Mr. Cadou about it. I got the information from the hospital records. One of the doctors read them to me. Mr. Connor said: 'Lay it out. We really don't know. Lay it out there just the way you found it.' I don't think we talked about putting this inconsistency in any earlier story. The story I wrote on August 12, 1965 about Reagan's death stated that Reagan had been sent to the hospital on July 14. In reading McAdams' statement, it did not occur to me that he had said in effect that Reagan had not been sent to the hospital until July 15. I did not realize this until I checked the hospital records sometime in November. This inconsistency was pointed out in the November 12 story, but it was not put in any story

published after November 12,* although McAdams' original accusation was reported in most of them in one form of another." (R. pp. 7196-7231. Petitioner's Summary of Evidence, pp. 1172, 3)

* Actually November 7th story, Complaint Exhibit *12*.

This was a telling discrepancy. Contrary to the emphasis upon Regan's hospitalization being on the 15th instead of the 14th, Respondent attaches little importance to that. Jail inmates are not apt to know dates. But they aren't apt to mistake 5 P.M. in July for the wee dark hours of the morning.

It was not easy to get Mr. Johnson down to the point. This contributed to the wide ratio mentioned above.

The other two points to Johnson's testimony were that he knew of this telling discrepancy before Complaint Publication No. 11, on November 6th, and that his superiors did learn of the telling discrepancy not later than when they saw his copy for No. 12, November 7th. When they so learned is quite important as an explanation of the jury's first verdict. At first Johnson fixed the time of his superiors' knowledge as Thursday, November 4th.

"Q. Do you think you talked to Mr. Cadou?

"A. I think so, yes.

"A. And that would have been Friday, November 5th?

"A. Most likely it might have been Thursday night." (R. p. 7208).

Even November 5th knowledge should have prevented publication of Complaint Exhibit 11, on November 6th, headlined:

"EX-CELLMATE BACKS BEATING REPORT" (See p. 50) which reports upon "Mac-Told-Me" witness, George Thomas. It contained no hint of the telling discrepancy.

Reagan ambulatory problem; hospital records, which were read to Johnson.

When Warrum transferred Reagan to the Basement Cage, he was carried down. He was never seen walking by Warrum (R. p. 4254).

Many others swore Reagan claimed he couldn't walk and didn't. On June 28th Reagan walked with assistance and staggered even then. However, hospital records confirm Reagan's claim to the fact he claimed leg and hip difficulties. During the 47 days preceding his arrival at jail, he had been to the hospital 6 times, as follows:

May 10th, passed out downtown, stated he had seizures. Time in hospital one hour, 26 minutes (Reagan Med. 8; R. p. 6768).

May 27th; blacked out. Police brought him in after "most recent episode." Time in hospital, one hour, 54 minutes. (Reagan Med. 7 & 7A; R. p. 6769.)

June 3rd; "Legs and hips hurting him," "filthy and unshaven," "self referred." Time in hospital, 29 minutes. (Reagan Med. 6 & 6A; R. p. 6770.)

June 17th; "Legs hurting—both legs have been aching for a week." Self referred. Time in hospital, 53 minutes. (Reagan Med. 5 & 5A; R. p. 6771.)

June 21st; "Sick man," "been here 3 times for same complaint, pain in legs and hips," self referred. Time in hospital, 1 hour, 28 minutes. (Reagan Med. 4 & 4A; R. p. 6772.)

June 26th; Referred by police; drunk; "says he has pain in (left) hip." Time in hospital, 4 hours, 40 minutes. (Reagan Med. 5B; R. p. 3337.)

This was before Reagan entered the Jail. He was complaining of pain in his left hip. The "anatomical Diagnosis" of the August 8th autopsy states:

> "The left hip has a recent dislocation of the head of the femur posteriorly." (Reagan 113; R. p. 4842.)

Reagan was brought to Jail June 27th.

June 28th. This record says "self referred" but he was taken by Sheriff's Department. "See 2 d. (days) ago for hip pain." In hospital 2 hours, 50 minutes. (Reagan Med. 2 & 2A; R. p. 3340, 3446.)

July 8th. Referred by Police (means Sheriff). Time in hospital, 1 hour, 20 minutes. "Pt. (patient) is a prisoner at M.C. Jail for drunkenness. Another prisoner in room states he lied in bed on back most of time. Pt. is ambulatory—however appears to be suffering from chronic brain synd(rome). Exam.—beginning sacral deceibitus and 6-8 "scattered abrasions on shins." "Poor skin care. Recommendations (1) Nursing home care (2) Return .pm." "*Signature*" "unable to sign." (Reagan Med. 1 & 1A; R. p. 6773.)

July 14th, entered hospital—see Reagan 39, 40 & 41, below.

August 6th. The day before Reagan died the Neurology Staff commented upon this condition. (Reagan Nos. 39, 40, 41; R. p. 6779.) These can be read in the Summary. For convenience the first part of the Summary is here copied:

> Stamp record shows entry 7-14-65 at 5:09 P.M.
>
> "'51-year-old white male entered on the 14th of July, 1965, following injuries sustained while in Jail. Seen previously in receiving ward by Dr. Davis in post-ictal state. At that time there was no complaints pertaining to the lower extremities. Since this time there has been apparently a gradual loss of power in

lower extremities (or whether this occurred following a beating is not clear), and loss of bladder and bowel control as well as continued confusion and unresponsiveness. Also nurses have been impressed with alternating tremors (considered DT's at one time) which did not impress Dr. Davis when he saw him in June.' Alternating tremors may be related to seizures. 'Today he shows a sensory level to upper thigh and perhaps higher. Responses are poor everywhere, however. With Vigorous painful stimuli, however he flinches from lower abdomen upward and gives no response from thighs down. . . .'" (Pet. Summary of Evidence, pp. 1101(b), 1102.)

Johnson testified that sometime during the week prior to November 7th he examined, or had these medical records read to him (R. p. 7208). So Petitioner's reporter, Johnson, knew of this medical history prior to the first recovery publication.

Pearcy tells Petitioner's Reporter (Dean) of Reagan's ambulatory problem.

Judge Pearcy told Petitioner's reporter, John Dean, that Respondent told him Reagan claimed he couldn't walk (R. p. 4053, 54). Dean was not called by Petitioner.

Pulliam, E. S., Assistant Publisher's A. M. interpretation of articles.

"Q. Go down to the foot of the column below the two pictures of Denzil Neville and Jimmy Green and let's read, 'Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined $10 to $500 and jailed from 10 to 60 days if convicted.' 7-1-8-6. Next paragraph, 'The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared (R. p.

5297, LL. 20 to 27) before the grand jury." 7-1-8-7. Do you want to state there was no implication against the Sheriff in quoting that tampering statute and then making that statement about him immediately following? Is that your position?

"A. No.

"Q. What is your position?

"A. Well, my position about what? . . .

"A. *This does say in so many words that Sheriff Fields and deputies seized the witness.*

"Q. *Yes.*

"A. *And that is as you say, an implication?*

"Q. *Yes?*

"A. *Yes it is.*

"Q. *And it is an implication that he had violated that statute against tampering with witnesses, isn't it?*

"A. *I don't agree to it.*

"Q. *You don't agree to it?*

"A. *No.* . . . (Emphasis added.)

(R. p. 5297, 9.)

"Q. . . . Tell me the purpose of citing the statute on tampering with witnesses in paragraph 7-1-8-6, immediately before reciting that the Sheriff and his deputies had seized this witness. What was the purpose of putting it there if it wasn't to put an implication on the Sheriff?

"A. Well, you are reading that into it. The reason it was in the story, my guess would be, that we often in newspaper stories, you report what the penalty of a violation of some kind will be and that is what is done here.

"Q. And what violation were you talking about, did it have some kind of violation that you are talking about in the story.

"A. Well, there were a number of witnesses by this time involved in this, not just McAdams.

"Q. What violation were you talking about? Don't you (R. p. 5300, LL. 10-27) think the reader—

"A. Any possible violation of the rights of a witness.

"Q. *All right, Mr. Pulliam, you don't think that the redder would construe that to mean that that penalty applied to Sheriff Robert H. Fields who was named in the next paragraph, you don't think so?*

"A. *Not he alone.*

"Q. *No, no, no that isn't an answer to my question. Do you think the reader would think that was a penalty due Sheriff Robert H. Fields on the basis of those two paragraphs?*

"A. *Not necessarily, no.*

"Q. I just wanted your view." (Emphasis added.) (R. p. 5300, 1.)

MR. JACOBS: That's Complaint Exhibit 3. ". . . Let's read from the Editorial. Now in the Editorial, this is The Star speaking, isn't it?

"A. That's right.

"Q. All right. 'It seems odd to us that Prosecutor Noble Pearcy should see nothing (wrong) in the fact that deputies from the sheriff's office and the sheriff himself should call a chief witness, who had appeared before the grand jury for interrogation and get a retraction of his grand jury testimony from him.' 3-1-7-6. Is there an implication against the sheriff there?

"A. I still say, an implication of what?

"Q. *Intimidating witness McAdams in the Reagan murder case, that is what we are talking about.*

"A. *I suspect, yes.*

"Q. *You think there is?*

"A. Yes there is." (R. p. 5249, 50.)

"Q. I beg your pardon, it is, sir. These blur sometimes in the copying. 'Another question: *If the sheriff and his deputies had nothing to fear from a grand jury investigation,* if they know what they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence?' 3-1-7-8.

"'It makes you wonder, doesn't it?' 3-1-7-9.

"*Do you mean that that didn't carry a preceding implication against the Sheriff prior to the time you quoted this tamepring statute over here? That is your Editorial, Mr. Pulliam.*

"A. *Sure it is.*

"Q. *Did it carry any implication against the Sheriff that he was tampering with the witness in a murder case?*

"A. *Yes.*

"MR. SCANLON: *He is asking if you if it carried an implication against the Sheriff personally that he was tampering in a murder case.*

THE WITNESS. *No.*

"Q. *I didn't say Sheriff's department and I don't think Mr. Pulliam thought I did and the Editorial doesn't say it. He* (it) *says, if the Sheriff and his deputies.*

"A. *It says if the Sheriff and his deputies had nothing to fear from the grand jury investigation.*

"Q. *Now, do you think that carries an implication against the Sheriff himself?*

"A. Yes, I think so.

"Q. All right, I thank you." (Emphasis added.) (R. p. 5303, 4.)

"Q. I have a full page anyway, so we can establish that. Let's read paragraph 2-1-7-2, 'Allegations of " 'murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history.' 2-1-7-2.

"Now there is no question but what that is referring to the murder of Elmer Reagan, is it?

"A. That's correct.

"Q. There is no question but what the sadistic deputy referred to was Sergeant Donovan King?

"Yes, it does.

"Q. Well, he is the one that was charged, right?

"A. (No response.)

"Q. All right. Now, 'frame-up of an innocent man' no doubt that refers to William A. Brown?

"A. Right. (R. p. 5323, 4.)

Pulliam, E. S., Assistant Publisher's P. M. interpretation of articles, also, "cumulative meaning."

"Q. . . . Now, some of these paragraphs I have read to you, you said you think carry implications against the Sheriff in implicating (sic, intimidating) McAdams in the Reagan murder?

"A. You mean some of the stuff we have read this morning?

"Q. Not all of it but some of it.

"A. Yes, a couple at most.

"Q. And I think you might concede that some might be debatable too?

"A. Anything is debatable, any newspaper story is debatable, different people read it different ways.

"Q. *And you think some of it might be read by some people the way I thought and some by the way you thought?*

"A. *Of course.*

"Q. Okay, fair enough. But you don't think that this series was an effort to attack the Sheriff, is that right?

"A. No." (R. p. 5326, 7.)

"Cumulative Meaning," Petitioner adopts, for objection purposes.

"A. Just the last two paragraphs.

"Q. All right, you think by reading the whole editorial it puts a different meaning on it, is that right?

MR. SCANLON: *You say the whole editorial or all the articles?*

"A. *As I said before, you have to put all this together, the editorial is based on news stories we printed.*

"Q. *In other words, you accept your answer your lawyer gave?*

"A. You permit that, wouldn't you?

"Q. Let me ask you this question and *you give me your present answer.* Did it, referring to the last two paragraphs of the editorial you just read, carry any implication against the Sheriff that he was tampering with the witness in a murder case, now, give me your answer?" (R. p. 5665.)

MR. SCANLON: "*I object to that for the reason the question as Mr. Jacobs knows, is not what one isolated article implies or what sentence means but the whole thing means. All the articles and that of the entire article implies.* Do you want to amend your question, you are asking him only about two paragraphs?" (Emphasis added.)

MR. JACOBS: "Are you instructing him not to answer, you haven't instructed him?"

MR. SCANLON: "I will not instruct him, I think that is the proper question, what I have said. Do you want to rule on that, Your Honor?"

JUDGE: "Objection overruled."

"A. As I said before, implication to me means involvement, not implication and guilt, which I think you are trying to get me to say.

"Q. *Let me read this question to you again and I want you to answer me: 'Did it—Exhibit 3, paragraph 3-1-7-8 and 3-1-7-9—'carry any implication against the Sheriff that he was tampering with the witness in a murder case?*

"A. *I am not changing my testimony.*

"Q. *Let's read the rest of it. Go to page 51, after you answered that question yes. 'Mr. Scanlon: He is asking you if it carried an implication against the sheriff (R. p. 5666) himself?' Answer: 'Yes, I think so.' Is that your testimony?*

"A. *Yes, the editorial says it's the sheriff's office that is accused of wrongdoing.*

"Q. *That is the testimony you gave?*

"A. *Yes.*

"Q. *Do you want to change it?*

"A. *Yes, on the context of this.*

"Q. *State your changes.*

"A. *I have already said it as best I can that implication to me means involvement.*

"Q. *What does tampering mean?*

"A. *I don't know, that is your question?*

"Q. *You don't know what tampering means?*

"A. *Not legally, no.*" (Emphasis added). R. p. 5667)

Pulliam, E. S.—Mind Clears Under Questioning by Own Lawyer.

"Q. Turn to Exhibit 248, first column. I am going to read three paragraphs, 7-1-8-6, 7-1-8-7 and 7-1-88, 'Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted.

"'The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared before the grand jury.

"'The witness, Charles P. McAdams, 35 years old, had signed a notarized statement accusing a sheriff's sergeant of the fatal beating of an inmate, but, according to Fields, repudiated the statement during the questioning by Fields and deputies.'

"Now you don't think anyone would read that as indicating that Sheriff Fields had violated that statute in reference to tampering, is that correct?

"A. Not personally." (R. p. 5729, 30)

Lewis, Ed., Conference with Reporter Johnson.

"He said that no one knew about this, that this meeting was off the record, that no one was aware that he was there except his Editors, and he didn't identify who the Editors were, and he had a sheet of paper with a list of names on it, and he read off the names and only two of the names were familiar to me that I recognized were Funk and Scott, and I suppose maybe there were a dozen people on the list, or 10, and he said that he wanted these people suspended immediately and replaced by the Sheriff's Road Patrol, who in turn should be replaced by the State Police, the Sheriff should bring in the State Police, *and that he wanted the Sheriff to state publicly that when McAdams repudiated his statement*

that he was lying, and that if the Sheriff would make these concessions why they'd lay off him. And he continued that he had evidence of other murders and that he was going to leave my office and investigate those further, so I told him I would relay this information to the Sheriff, and I did, and the Sheriff said 'If Ri x Johnson wants to be Sheriff, he'll have to run for the office,' and I had no further contact." (R. p. 5034, 36)

Connor, Lawrence, Regarding Neville and Crick.

"Q. You are telling me sometime between the 20th day of November, 1965 and the 24th day of November, 1965, you did learn that Denzil Neville was not in jail at any time since the beginning of the world down to the present time when Danner Crick was there?

"A. I read it in another paper but it didn't convince me at the time.

"Q. But you did have it checked?

"A. Partially completed.

"Q. Did you ever complete the check?

"A. No. I intended to when I got back on Tuesday morning, that is when the Grand Jury report came in and it seemed pointless to go on with that." (R. p. 6123)

Continuing with Mr. Connor:

"Q. You have published a story a deputy sheriff slammed an old man up against the wall. Let's go to 271 where you published the story. Let's read 17-15-3-2: 'Mr. Crick kept coming out, so the deputy walked over to him, took a hold of him and pushed him back into the cage. The old man went up against the wall and hit the wall and fell down.' 17-15-3-3. 'I thought he was dead fore they took him out, they way the old man acted' Neville said. 'They carried him upstairs and he was limp. I thought he was dead when they carried him upstairs.' You

published that on the 12th day of November, 1965, and on the 20th day of November, 1965, you had notice that one Denzil Neville was not in the jail at the time Crick was, you later checkup and found out it was true he was not in the jail during the time Crick was. To this day you have never corrected that statement.

"A. I found out in recent days, I see no reason what purpose would be served by putting it in the paper. No, we haven't.

"Q. I think I could explain that to you, Mr. Connor, but I don't think I could comprehend it for you." (R. p. 6127, 8)

Omissions from Hembree and Roberts Statements.

Regarding the "meld" and "distillation" of the publication, there were many enlightening examples. Fred Roberts, a convict member of the Mobley Mob. (R. p. 4528 par. 13) gave a statement to Petitioner on November 5th. (R. p. 5400) Asked and he answered:

"Q. When was the last time you saw any brutality in the jail?

"A. More than two years ago. I've been in the jail six or seven times, maybe more, since that time."

Regarding this, Petitioner's Reporter Donohue was asked and answered:

"Q. You knew that about covered the time Sheriff Fields had been Sheriff, didn't you?

"A. It would just about cover, it would cover the whole time, I believe.

"Q. You had him—Roberts was talking about something that happened three years ago?

"A. Yes.

"Q. Here in his statement he had been in jail six or seven times, maybe more, in the last two years

and he hadn't seen any brutality in that time. Where, if anywhere, did you tell the public that?

"A. It is not here.

"Q. You just didn't tell them, did you? All right, was there some reason you didn't put that in your story, Mr. Donahue?

"A. It may well have been that I put it in and when they were hooking the stories together it got a little long and got knocked out, although I can't say for sure." (R. p. 4491)

But later when Mr. Donohue was asked about a similar omission from the statement of one Hembree (R. p. 4207) he reverted to the Roberts omission and asserted he had included both omissions in his manuscript:

"Q. All right, let's go ahead. 'Anything else from that time in jail?' 'Not that I can think of.' Question: 'When was the next time you were in jail?' 'I spent two weekends there in September of this year but I couldn't truthfully say I saw anything out of the way those times.' 'Why were you in jail those two weekends?' Answer: 'No operator's license. The judge gave me six days and said I could do it on two weekends.'

"Now, look very carefully I want to know for sure whether or not you have anything in that story about that.

"A. I don't find anything.

"Q. Make sure, positive, that is one we have been leading up to.

"A. I don't see it.

"Q. All right. Why didn't you put it in?

"A. *I did some searching on this case and with the other case. I am sure I put those in the original story (meaning his manuscript).*

"Q. *In the Roberts'?*

"A. *That other situation.*

"Q. *Where he hadn't said he hadn't seen anything in the last two years?*

"A. *Right.*

"Q. *You are sure you put that in?*

"A. *Yes.*

"Q. *And you did in this case?*

"A. *I am sure I did.*

"Q. *And somebody took it out?*

"A. *The answer is yes.*" (R. p. 4499, 4500)

Reporter Donohue was confirmed, regarding his reporting Hembree's disclaimer. His manuscript was produced. (R. p. 4234) Donohue included this quote from Hembree:

> "I spent 2 weekends in September of this year (1965) but I couldn't truthfully say I saw anything out of the way."

Reporter Donohue was also confirmed regarding his inclusion of the Roberts statement. City Editor Connor acknowledged Mr. Donohue's manuscript contained this statement:

> "Q. Turn to page 7 of 260 (MS). Go to line 17, about the middle of the line. 'Russell added that, although he has been in jail six or seven times within the past two years he has not seen any brutality for more than two years.' Now that is the statement of Fred Russell Roberts. I think if you will check you will see that it is, correct?
>
> "A: Yes. (R. p. 6096, 7)

Connor's Explanation.

City Editor Connor was later afforded the opportunity to comment on the omissions. He was asked and answered regarding the Roberts' omission:

> "Q. Well can you tell me why (sic) (while) you were writing about 'brutality at the jail (?) (sic)

wasn't it newsworthy that for two years here is a man who was a rather frequent customer, at least I would think so, six or seven times in two years, and I think if you consider the fact that he was part of the Mobley gang, he was a rather experienced person, hadn't seen brutality for two years, just during the very period that Sheriff Fields was Sheriff. Can you tell me why that was taken out?

"A. Just a—

"Q. Matter of judgment, is that right?

"A. Matter of judgment. The fact that the stories were about brutality in the jail, not non-brutality." (R. p. 6098).

The interruption was because Mr. Connor's response to such "melding" and "distillation" had become so commonplace that he invariably gave the common answer—"just a matter of judgment"—so the interrogator knew what he was going to say and spontaneously interjected it.

For just a few such examples (see R. pp. (5873) (5879) (5884, 5) (5891, 3) (5895-5897) (5900, 2) (5905, 9).

Fife, Judge and His Relations with Petitioner

On his discovery deposition, appellant's Assistant Publisher, E. S. Pulliam, was being pressed for names of other denouncers of appellee, besides The Indianapolis Star, and, of course, its criminal clients.

"A. . . . I can't name you names but I talked to attorneys who were concerned about this but I don't remember specifically which attorney.

"Q. Bill Erbecker?

"A. Oh, no.

"Q. What do you mean by 'Oh, no'?

"A. Merely because he does not have a good reputation as an attorney in this community. I am speaking as a layman.

"Q. Oh no?

MR. SCANLON: What do you mean 'Oh, no'?

"Q. I thought he was one of your stand-bys from the articles." (R. p. 5498, LL. 16-27).

"A. Well, you are entitled to your opinion.

"Q. All right, we will get to Bill later. Name some lawyers you talked to.

"A. I told you, I don't remember any.

"Q. Well, you don't talk to so many lawyers, do you, that you couldn't remember one or two?

"A. You are asking me under oath to be specific about my memory of a conversation of a year ago, a passing conversation at a country club or cocktail party, at lunch or on the street and I don't remember specifically.

"Q. Mr. Pulliam, I don't think it is casual when you run an article here saying that the Sheriff would be bombed out because of criticism. The criticism I have come across of Sheriff Fields has been in the Indianapolis Star.

"A. There has been considerable of it.

"Q. Yes. I am trying to find out who else was critical.

"A. Well, there is a fellow named Judge Fife and several other judges that are quoted in this story.

"Q. Is that the same Judge Fife that you cartooned in your newspaper in his judicial robes standing in line with a thug paying his taxes, is that the same one?

"A. It may have been, I don't remember the cartoon.

(Objections and discussion omitted)

"It may have been, I don't remember the cartoon.

"Q. Well, you remember he didn't pay his taxes, don't you?

"A. I do now." (R. p. 5499, 5500)

"Q. You don't remember the cartoon?

"A. No, I don't remember the cartoon.

"Q. Well, let's see if I can refresh your recollection."

(Document displayed to the witness).

"Do you remember seeing that cartoon that is marked here as XYZ 4?" (R. p. 5501)

(Objections and discussion omitted)

"Q. Do your remember seeing that cartoon that is marked here as XYZ 4?"

"A. I am sure I saw it, but I don't recollect it."

"Q. You don't have any recollection of it. I will ask you if it isn't a fact that that cartoon marked as XYZ 4, ran in the Indianapolis News prior to the time these articles ran, about Judge Fife not filing his Federal Income Tax returns and not paying his personal property tax for ten years, and then you quoted him all through these articles 'Called it a whitewash,' you called the 'Grand Jury a whitewash' and he ran for office in the Spring of 1966 and you never said one word about him paying taxes, isn't that the truth?"

MR. SOSHNICK: I object to that as being argumentative and not inquisitive.

COURT: Objection overruled.

"A. I would have to go back and read all of the articles before answering that. I haven't done that." (R. p. 5502)

"Q. All right, tell you what you do, you find me any article where you related this on Judge Fife, after you had quoted him so copiously in these articles.

"A. It seemed to me we reported it pretty forcibly in that cartoon.

"Q. Yes, that was in February of '65. Did you report it when he became a candidate?

"A. I would have to go back and check.

"Q. Did you write an article in Behind Closed Doors that said he was disinclined to run and then began to feel he should fight back at the mounting criticism but now faced the realization that the opposition would bomb him out? Did you have any article like that in relation to Judge Fife?

"A. Not that I know of.

"Q. Judge Fife said what you wanted him to say in these cases, didn't he?

"A. I don't know what you mean.

"Q. Don't you know, Mr. Pulliam, that your reporter read that Grand Jury report on October (sic) (November) 23, 1965, and called it a whitewash and then went in and interviewed Judge Fife and Judge Fife coincidentally called it a whitewash? That your reporter called it a whitewash first, did you know that?

"A. *It had been called a whitewash long before that.*

"Q. *Well, it only came out that morning. How was it called a whitewash before that?*" (R. p. 3503)

"A. *In the legal fraternity in Indianapolis.*

"Q. *Name me one lawyer.*

"A. *Thomas Scanlon.*

"Q. *Your lawyer?*

"A. *Yes, sir.*

"Q. *Oh, now there is just no use to go any further, is there? Name me another one.*

"A. *I told you, I couldn't remember it, the names of the others.*

"Q. *When did Tom call it a whitewash?*

"A. *This was before and how far before, I don't recall, but before the Grand Jury Report came out.*

"Q. Well, I will take Mr. Scanlon's deposition and find out how he knew what that Grand Jury report was going to be. That is quite interesting.

"Well, at any rate, leaving Judge Fife aside for the moment, are there any other instances where you have been very critical of someone up to a certain point and they did the Star a favor and then you ceased to criticize them and began to praise them? Can you think of any cases of that kind?" (Emphasis added)

MR. SOSHNICK: Object to that question because of the word "other." It assumes that was the situation in this case.

COURT: I'll sustain the objection." (R. p. 5504)

"Q. At any rate, you will get me any article about Judge Fife, after the publication of these forty-four articles, that criticized him about his tax situation, will you?

"A. Well, how much time do I have to do this?

"Q. I don't know how much time you have to do that.

"A. Well, you are ordering me to do it.

"Q. I am asking you to do it.

"A. Well, when do you want it?

"Q. I don't mean this afternoon, of course not. A reasonable time."

MR. SCANLON: In due course we will supply whether or not there is such an article.

MR. JACOBS: Yes, we will work that out." (R. p. 5505)

Of course, there is no such article in the record.

"DEPUTY TIPSTERS," THE PUBLICATION AND THE FACTS.

"Johnson Digs 11 Weeks to Get Facts." Tells of Tipsters.

This is also General Exhibit No. 238 (R. p. 6706) The second article in Complaint Exhibit 1 (R. p. 44) carried a one-column headline, "Reporter Digs 11 Weeks To Get Facts", and reads as follows:

> Rick Johnson, reporter for The Indianapolis Star whose investigation of the beating-death of Elmer L. Reagan led to the Marion County Grand Jury probe yesterday, has been working 11 weeks on the story 1-1-7-3.
>
> On Aug. 11 he first discovered that Reagan had died. He reported it in The Star the next day. 1-1-7-4
>
> Then two days later on Aug. 14 *he received a tip from a man who told him:* 1-1-7-5
>
> *"You haven't even got half of the story. The nut didn't kill that man. A deputy did."* 1-1-7-6
>
> *The tipster gave Johnson the name of the deputy and some advice:* 1-1-7-7
>
> *"Don't start nosing around the jail. They (prisoners and deputies) are scared to death. No one dares to talk about it."* 1-1-7-8
>
> Johnson waited a few days and then began asking questions of his tipsters about what he had heard. Deputies and former inmates said they, too, had heard the story but could not provide detailed information. They promised to —(1-1-7-7)—relay any information they obtained. 1-14-1-1
>
> *The vital tip came at 1 a.m. Oct. 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14. The deputy provided Johnson with the name of the alleged attacker and with names of other prisoners who saw the attack and were willing*

to talk. Some had been moved to other penal institutions. 1-14-1-2

On Oct. 8 another deputy gave Johnson the names of deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cellblock who could have seen the beating. 1-14-1-3

The two tipsters had given almost identical information. 1-14-1-4

Judge Eugene M. Fife Jr., Criminal Court, Division 1, was informed about the information Johnson received. 1-14-2-1

On Oct. 21 he called in the prisoner who had talked to the deputy. The prisoner gave Judge Fife and Johnson the entire story of the beating. 1-14-2-2

Fife then advised that the Marion County Coroner's Office be notified. The next day, Bethel E. Gaither, chief investigator for the coroner, and Johnson met in Fife's office with the prisoner. At that session the prisoner made a statement and signed it. It then was notarized. 1-14-2-3

Last Monday Gaither showed the statement to the coroner, Dr. Robert C. Collins, who ordered the information taken to the grand jury. 1-14-2-4

Yesterday Gaither turned the statement over to James E. Bath, chief deputy for the grand jury, and to Prosecutor Noble R. Pearcy. They took it to the grand jury. 1-14-2-5 (Emphasis added)

Tipsters, and Petitioner's Passion for the Truth.

From Respondent's Indiana Supreme Court brief:

The latter was Deputy Cottey. Two of the other deputy informants were Finney and Atwell. (Tr. p. 7161, L. 16 to p. 7163, L. 27; Summary of Evidence pp. 1162 to 1163). For obvious reasons none of these deputies were identified in appellant's publications. Appellant also refused to identify them by name dur-

ing discovery exercising rights under Sec. 2-1733 (*Burns Ann. Statutes*, 1968 Replacement, Vol. 2).

"A few weeks before he left office, the appellee in an obvious attempt to secure a commitment from each jail deputy that he was not one of Johnson's tipsters, had each of them summoned to the sheriff's office and deposed on this subject. (Tr. p. 6651, L. 8 to p. 6652, L. 27; Summary of Evidence p. 1070). At such time *every deputy dutifully denied he had ever talked to Johnson as described in the publications*. Appellee, thus assured, then subpoenaed every deputy, and told the jury on opening statement that he would prove there were no deputy informants as stated in appellant's publications.

"But on trial deputies Finney and Atwell, as appelee's witnesses, completely ruined appellee's theory that there were no deputy tipsters *by truthfully admitting their talks with Johnson all as reported in appellant's publications.*" (Tr. p. 3690, L. 7 to 3740, L. 27; p. 4158, L. 1 to 4171, L. 2; Summary of Evidence, pp. 438 to 444; 510e to 512) (Emphasis added). (Appellant's Brief pp. 145, 6).

(From the record, Rick Johnson testifying).

"Q. Now in the course of this lawsuit, *have those deputies who were your tipsters* been asked by the plaintiff under oath about their conversations with you?

"A. Yes, they have.

"Q. And in that way they were forced to reveal themselves?

"A. They have." (R. p. 7181) (Emphasis added)

What a passion for the truth!

Johnson's testimony was utterly false and Petitioner knew it. The statement from the brief is true except that none of the tipsters testified that their talks with Johnson were "all as reported in Petitioner's publications."

Space precludes the full story but it is part of the record set out in copious quotations and record citations, beginning at page 146 through page 192 of Respondent's-Appellee's brief in the Indiana Supreme Court.

RECORD QUOTES REGARDING TIPSTERS.

The article printed above was one of two comprising Complaint Exhibit 1 (R. pp. 43, 44). City Editor Connor wrote the article from Reporter Johnson's manuscript, the first 3 paragraphs reading:

> "On Aug. 14, two days after Elmer Reagan's death was bared, the Indianapolis Star received an anonymous tip that 'You haven't got half the story—the nut didn't kill that man—a deputy did.'
>
> "The tipster identified the deputy but when pressed for further details said, 'I know what I am talking about—what I said is true but I can't afford to get involved.'
>
> "~~The only other~~ information the tipster provided was, 'Don't start nosing around the jail—they are ~~just laying for you~~[1] scared to death. No one dares to talk about it.'" (R. p. 6056)

The key testimony of Atwell and Finney, and all of Cottey's, are quoted below as well as excerpts from both Connor's and Johnson's depositions.

Fear; Don't Know Who They Feared.

"The tipster gave Johnson the name of the deputy and some advice:

[1] The 4 words lined out are X-ed out on the exhibit and can be seen at (R. p. 6056). The anonymous tipster became "a man" in Connor's rewrite. At the trial Petitioner claimed this was Sgt. Robert Atwell, and the other two deputies were Cottey (par. 1-14-1-2) and Finney (Par. 1-14-1-3).

" 'Don't start nosing around the jail. They (prisoners and deputies) are scared to death. No one dares to talk about it.' " (October 27, 1965, 2nd article of Complaint Exhibit 1, R. pp. 44 & 2627).

In reference to this paragraph, Reporter Johnson was asked, and answered:

"Q. All right. Now who did he say was scared?

"A. The deputies.

"Q. Who else?

"A. The prisoners, too.

"Q. All right. If the deputies and the prisoners were scared, who else was left besides Sheriff Fields, to be afraid of?

"A. I don't know what you mean. If the deputies were scared and the prisoners were scared, who else was there—to talk to?

"Q. Who else was left to be afraid of?

"A. Maybe the big, bad wolf. I don't know what you're talking about.

"Q. Did you ever see any wolves down around that jail?

"A. I've seen a lot of vultures down there, too.

"Q. You answer my question.

"A. Yes; wolves. Some of them wear hundred dollar suits.

"Q. All right. Now who was there, outside of the prisoners and the deputies, in that Jail, to be afraid of, outside of the Sheriff? Let's quit stalling.

"A. Who was there to be afraid of, outside of the deputies—who was it?

"Q. The deputies and the—Who was there at the Jail to be afraid of, outside the deputies and the inmates? You say the deputies were afraid, and the inmates were afraid. Who was it they were afraid of?

"A. I can't pinpoint that for you." (R. p. 3337, 8)

Connor, City Editor, Refuses to identify "Deputy Tipsters" But Did Identify Williamson Who Feared for His Life if it Became Known He had "Talked".

"Q. Do you believe the story McAdams told about Sergeant King beating Reagan? You still believe it?

"A. Yes.

"Q. You do? All right. I will ask you this question: Do you know of anybody in the world who will testify that they ever saw Sergeant King lay a hand on Elmer Reagan?

"A. No, I can't say flatly that I do, no.

"Q. Well, can you say that roundly that you do. Do you have anyone in mind that you think might say so?

"A. No.

"Q. What do you base your belief on? Just give me all the information that makes you believe that Sergeant King beat up Elmer Reagan.

"A. Based on the statement that we got from—

"Q. Of McAdams?

"A. Based on that and some earlier rumors that we had gotten about the same situation.

"Q. About Reagan?

"A. Yes.

"Q. Tell me who gave you any earlier rumors.

"A. I can't do that.

"Q. Why can't you?

"A. That would be revealing a source of our tips.

"Q. Well, you have revealed a lot about who gave you information in these stories. Why can't you tell me those?

"A. Because the reporter made a promise that he wouldn't.

"Q. You made a promise to Paul Williamson that you wouldn't reveal his name too, didn't you?

"A. Is he one of the prisoners?

"MR. SCANLON: Yes.

"Q. Well, off and on. I'm not—I think maybe you caught him between some of his frequent trips to jail. I think he was outside when you talked to him.

"Q. I'm going to read 4-17-1-13, 14, 15, and 4-17-2-1. "A parolee told The Star Thursday night that he entered the Marion County Jail in July, and although he didn't witness the beating he heard conversations between McAdams and the cell boss, in which McAdams told a "story almost identical to the statement he gave Chief coroner's office investigator, Bethel E. Gaither.

"The parolee said he would like to testify about the beating and other incidents of brutality in the jail but he feared reprisal by deputies if he ever went to jail again.

"If they ever found out I was talking it wouldn't be safe for me to walk the street,' the parolee said. He added, 'There are a lot of guys who could tell plenty if they weren't so scared. Keep going—you haven't even scratched the surface.'

"The parolee said, 'I know McAdams. He would never have broken if he hadn't been forced. He just wasn't that way.'"

Now let's take Interrogatory 4J that we have propounded to the Defendants. I am reading it to you; it is a matter of record: "Identify the parolee referred to in paragraphs 4-17-1-13 through 4-17-2-1, and furnish any statement he made." Answer: "Paul Williamson."

Now, why did you tell on Paul Williamson when he said he was afraid for his life, walking the streets,

if you are determined not to reveal the source of information?

"A. I don't remember why we did. Must have been a reason.

"Q. Maybe, could it be the reason that there is such a person as Paul Williamson and there is no such person as this deputy tipster?

"A. No.

"Q. What is this deputy tipster afraid of that he doesn't want to be identified? Is he afraid of violence, or losing his job?

"A. That's up for him to say. I wouldn't know. (R. pp. 5921, 5)

Mr. Johnson identified that "anonymous tipster" as Sgt. Robert Atwell. (R. pp. 7151, 3)

Atwell, Robert, the Anonymous Tipster.
Excerpts From Testimony.

"Q. The quote is, 'You haven't even got half the story. The nut didn't kill that man, a Deputy did.'

"A. No, sir, I didn't say a Deputy killed him." (R. pp. 4174, 5)

SIDE NOTE: Four days earlier Sgt. Haine had said of Hynes' murder, "But they killed the wrong man." (R. p. 2506, Pars. 9, 10, 11).

And again:

"Q. All right. Then did you say to Rick Johnson on that occasion, or any occasion, 'I know what I'm talking about. What I said is true, but I can't afford to get involved?'

"A. I didn't know anything about it, all I had was rumors to that, it wasn't me.

"Q. Well, did you say: 'I know what I'm talking about?'

"A. No, sir.

"Q. Did you say: 'What I said is true, but I can't afford to get involved?'

"A. No, sir." (R. pp. 4175, 6)

And again:

"Q. I'll read this third paragraph and then I'll ask you some questions about it: 'The only other information "the tipster provided was: "Don't start nosing around in the Jail, they are scared to death, no one dares talk about it.'" Now, did you make a statement to Mr. Johnson, 'don't start nosing around the Jail, they are scared to death. No one dares talk about it?'

"A. No, sir, I didn't say that.

"Q. Did anyone at the Jail ever tell you that they were scared over this rumor?

"A. No, sir.

"Q. All right, now I want to ask you this question in another way. Did you ever make a statement to Rick Johnson, 'Don't start nosing around the Jail, they are just laying for you, no one dares talk about it?'

"A. No, sir. (R. pp. 4176, 7)

"Q. Now, I'll read the next statement to you. 'A retired Indianapolis Detective when questioned regarding the tactics used to arrive at the facts warned, 'Don't barge in or all the doors will close. Everyone is scared right now. Wait and then start asking some questions of your tipsters and tell them the story you have heard. Eventually you'll get a tip that will pay off.' Did you ever make a statement of that kind?

"A. No, sir, I did not.

"Q. You are not a retired Indianapolis Detective are you not?

"A. No, sir, I'm not.

"Q. Did you know Charles W. Haine?

"A. Yes, sir, I do.

"Q. Was he a retired Indianapolis Detective?
"A. Yes, sir, he was." (R. pp. 4176, 8)

Atwell Had Reasons to be Pliable.

The evidence does not disclose openly blackmailing Atwell, as in Finney's case, which is next. But it does disclose three facts by which Petitioner could have "put him through journalism school."

First: Some $1171 loot from an in-city robbery was taken from the Mobley Mob when recaptured (see supra P. 6). This was properly delivered to the City Police. However, Atwell went and retrieved it and it was stolen from Respondent's office. Johnson knew, and questioned Atwell, about this (R. pp. 7144, 5) and the date is fixed by General Exhibit 179, (R. p. 4528, pars. 13-16). The date was Aug. 12, 1965, the next day after the "They Killed the Wrong Man" story. (R. p. 2506, pars. 9-11). (R. App. P. 8a supra)

Second: Atwell was Haine's partner when they returned Schriver from Milwaukee (R. p. 2549, par. 11). (See p. 7, supra).

Third: See (p. 70a-71a infra) regarding receiving money from an attorney in Court, and Johnson told the attorney he had heard it.

Considering Petitioner's use of the McAdams' accusation, Atwell could see the possibilities without having them crassly pointed out to him, as was done in Deputy Finney's case. Atwell was a complete surprise to Respondent.

Finney, Tipster, Excerpts from Testimony.

At the trial, Mr. Johnson Swore:

"This deputy referred to in 1-14-1-3 is Deputy William Finney." (R. p. 7364)

The paragraph in question reads:

> "'On October 8th, another Deputy gave Johnson the names of the deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cell block who could have seen the beating.' 1-14-1-3. (R. p. 44)

On this we will adopt Petitioner's summarization of Finney's testimony on direct:

> ". . . In October of 1965, I was working in the jail. I had a telephone conversation with Rick Johnson *late in October of 1965 after The Indianapolis Star article entitled 'Deputy Accused in Death' appeared. Johnson called me at my home in connection with a man named Hinshaw. Johnson told me that Hinshaw was trying to cause me trouble; but that he, Johnson, would not put my name in the papers, because he had known me for a long time. I was also asked if I knew who worked the second shift in the jail.* I gave Johnson some names off of the roster that I had which included King, Roscoe Kennedy, Grunden, Marshall and Ping. The date of July 14, 1965 was not mentioned in the conversation. Johnson also asked me about the prisoners that had been in the jail a long time and I told him that McAdams, George Ray Brown, John Martin Young, Ronald Burton and Clayton Stalnaker were people who had been there for some while." (Emphasis added) (R. pp. 3682, 90)

Finney Confessed Duplicity Before Trial.

Finney was not a complete surprise, despite his deposing he had never had a conversation with Johnson. When paid mileage and witness fees on Respondent's subpoena, he demurred that he couldn't accept them since he had given a statement to the other side. Then he told Respondent's lawyer what he testified on direct (R. pp. 3729, 31). Petitioner's cross-examination would indicate that it was surprised that

Finney had confessed to his duplicity. But before it was over, everyone was surprised.

Mr. Finney's written testimony attests that he was not extraordinarily brilliant. It finally came out he didn't think King killed Reagan; but that Deputy Rankin was involved because of something he heard that Rankin had said during 1966 while Rankin was a patient in the psychiatric ward at Veterans Hospital (R. pp. 3780-3790, long and rambling).

Petitioner Tries Again To Move Date Back.

"Q. That was before October 26th, wasn't it?

"A. . Well, I'm—I'm tryin' to establish a date there. I'm not quite familiar . . . the incident I was involved in with Mr. Hinshaw is the date I can't find out to verify, and when I was in your office, you went over to that book there or somethin'—some book that had a bunch of pictures, and Mr. Price went over to it, *and you come up with a date of sometime on the 8th of October, right?*—So I don't know what date it was. But I think it was later than that, *because he called me, and his remark was that he had stirred things up down at the Sheriff's office.*" (Emphasis Added). (R. p. 3700)

"Q. Mr. Finney . . .

"A. *And I answered his questions he asked me because I feel obligated to Mr. Rick Johnson.*

"Q. Mr. Finney, did you ever mention to me at any time in our long conversation, anything about a man named Hinshaw?

"A. I did sir. I did." (Emphasis Added) (R. p. 3705)

"Q. Well, now why was it you called M. Johnson?

"A. I asked him if he had knew of any reason why I had got transferred to that position. Why I'd been transferred to the jail.

"Q. I see. You were asking him why you got transferred?

"A. I asked him, I called him, I think he will verify that. He's sitting right there.

"Q. I see. You called him to ask him why you had been transferred?

"A. If he had heard of any reason why I'd been transferred back there. He stated at that time that he didn't know.

"Q. I see.

"A. *But he says, you ain't gonna get hurt, he said, 'If they give you some stuff back there, get in touch with me.'*" (Emphasis added) (R. pp. 3716, 17)

"A. I believe in my conversation with you and Mr. Price at your office, *I said I couldn't tell the date.* It was sometime after Mr. Hinshaw's deal, I was not positive on any date, but it was after that and it was a couple or three weeks after my . . . Mr. Hinshaw *and you* . . .

"Q. *Okay.*

"A. *Went there and you provided me with the date of the 8th, and I've used that date that it was after the 8th or the 8th, that I talked to him.*" (Emphasis added) (R. p. 3734)

Cottey, Tipster, His Total Testimony.

Johnson, on direct, identifies Cottey:

"Q. When it says, The vital tip came at 1 A.M., October 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14." Who was that tip from?

"A. That was Deputy Arthur Cottey.

"Q. The next sentence, "The deputy provided Johnson with the name of the alleged attacker and

with names of other prisoners who saw the attack and were willing to talk." Was that Cottey, too?

"A. Still Cottey speaking. (R. p. 7163)

Cottey's Deposition, All That Was Read, At Trial.

Petitioner had already read its cross-examination of Cottey before Respondent read any of Cottey's deposition. However, it is printed here, as taken, rather than as read:

COTTEY'S DIRECT TESTIMONY.

"MR. JACOBS: Q. Question this is Arthur Cottey: "Did you ever have a conversation with Rick Johnson regarding the death of Elmer L. Reagan?

"A. Never.

"Q. Did you ever have a conversation with Rick Johnson regarding Elmer L. Reagan?

"A. No, I can't say as I did.

"Q. Or Charles P. McAdams?

"A. No.

"Q. Did you ever say to Rick Johnson this, or this in substance, in regard to the death of Elmer L. Reagan, 'You haven't even got half the story. The nut didn't kill that man, a Deputy did'?

"A. Did I ever hear that before?

"Q. Did you ever say that to Rick Johnson?

"A. No.

"Q. Did you ever say to Rick Johnson: 'Don't start nosing around the jail, they (referring to prisoners and deputies) are scared to death. No one dares to talk about it.'

"A. Did I ever say to Rick Johnson 'quit nosing around the jail'? (The previous question was read to the witness by the notary.)

"A. No, no, I never.

"Q. Did you in regard to anything else, say that?

"A. I never told him to quit nosing around the jail. I didn't have the right to tell him that.

"Q. Did you tell him prisoners and deputies were scared to death?

"A. No.

"Q. Did you ever say to Rick Johnson, that is, did you state the name of a deputy sheriff . . .

"MR. JACOBS: Strike that.

"Q. Did you ever relate to Rick Johnson a report that a prisoner had told a Deputy Sheriff, you or any other Deputy Sheriff, that he had seen Deputies beat Reagan on two different occasions on July 14th, 1965?

"A. No.

"MR. JACOBS: 17 is passed.

"Q. Did you ever provide Rick Johnson with the name of the alleged attacker and with the names of other prisoners who saw the attack and were willing to talk?

"A. No.

"Q. Did you ever give Rick Johnson the names of Deputies who were involved in the beating, we are referring to the Reagan beating, or had first-hand knowledge of it?

"A. No.

"Q. Did you ever provide Rick Johnson with the names of prisoners in the cell block who could have seen the beating?

"A. No." (R. pp. 6819, 20)

COTTEY ON CROSS.

The Petitioner read from its cross-examination of Cottey before Respondent read any of it.

"Q. 21, page 30: Mr. Cottey, I don't know whether you understood Mr. Jacobs' question. He asked you if you had ever had a conversation with Mr. Johnson in which the name of Charles P. McAdams was mentioned; you have had a conversation with him in which his name was mentioned?

"A. Yes, I wasn't asked that. McAdams' name wasn't brought out.

"Q. I didn't think you understood it. You have had conversations with Mr. Johnson in which Mr. McAdams' name has been mentioned?

"A. I had a lot of conversations with Mr. Johnson where McAdams' name was mentioned.

"Q. And as a matter of fact you told Mr. Johnson, did you not, Mr. McAdams wanted to talk to him?

"A. McAdams said, he didn't necessarily say to Rick Johnson, he said he wanted to talk to a reporter.

"Q. This was sometime before the Grand Jury investigation, sometime in October, 1965?

"A. It was in October of 1965.

"Q. You told Mr. Johnson that a prisoner named Charles P. McAdams had told you he was wanting to talk to a newspaper man about something that happened in the jail?

"A. He wanted to talk to a newspaper man, yes, sir.

"MR. SCANLON: Question 31. 'But sometime before you went on vacation you told Mr. Johnson that Mr. McAdams wanted to talk to him and then just a little bit before you left on vacation you told him that again, is that true?

"A. I told Rick that twice, yes." (R. pp. 6639, 43)

COTTEY ON RE-DIRECT.

Appellee reads further from Cottey's deposition on re-direct:

"(MR. JACOBS reads: This is the first answer, page 52:

> "A. I didn't make the contact. I just said that a prisoner—I told Rick that a prisoner wanted to talk to him. I didn't say whether it was McAdams; I'm sure of that—or what the man's name was; I'm sure of that.

"MR. JACOBS: Will you read the question? (The reporter repeated question number 101.)

"MR. SCANLON: Let the record show it is not only an improper question in the first instance but it has been repeated and repeated to the point of harassment of the witness.

"MR. JACOBS: Let the record show that question has been asked about that statement that time and that time only.

"MR. SCANLON: The record will show he was asked about the statement generally, I think, which includes—

"MR. JACOBS: That's right. Will you read the question? (The reporter repeated question number 101.)

"A. McAdams' name was never mentioned.

"Q. To Rick Johnson?

"A. To Rick Johnson. I am sure of that.

"Q. Q. No. 103: Did you know Elmer Reagan when he was in Jail?

"A. I wouldn't know the man if I seen him now.

"Q. Did you ever have any conversation with Rick Johnson about Elmer Reagan and his being beaten?

"A. No.

"Q. *Did you ever have any conversation with Rick Johnson in regard to a soldier by the name of Ronald Bryant, who had had tear gas fired at him?*

"A. *No. Wait a minute now. If I recall right, I think that was brought up to me by Rick, and asked me if I knew anything about it, and I knew nothing about the tear gas or the beating or nothing.*

"Q. *Did you then inquire about it at the Jail?*

"A. *I didn't have to inquire. It came to me—I can't remember how long it was—a few days after I heard some of the guys talking about the tear gas being used, that's all. As far as the beating, I knew nothing of the beating until I was on my vacation. I read it in the newspaper.*

"Q. *When Mr. Johnson asked you about the tear gas can you fix the time?*

"A. *No, I can't. It was before I went on my vacation.*" (Emphasis added) (R. pp. 7565, 7)

Summary on Tipsters.

Thus, the tipsters add up that *Cottey* told him McAdams wanted to talk to him (or a reporter), not saying what about. He got from *Finney* second shift deputies' names, and names of some longtime prisoners; *Atwell* heard the rumor Johnson had been spreading; and that he had stated the rumor to *Cottey, Lts. Chance and French,* but abandoned the last two as tipsters, on cross.

Johnson Abandons French & Chance as "Tipsters."

"Q. All right. Let's get down here to French. You said yesterday morning that Lieutenant French was one of the tipsters. Then in the afternoon in your testimony you said you believed French had given you some information. Now are you sure, or are you uncertain?

"A. I am pretty sure he verified the fact that he had heard from somebody else, or *he verified the tear gas episode, but I did not attempt to get from him the source of his information.*

"Q. *What did he say?*

"A. *I asked him if he had heard about King teargassing and beating a prisoner, and that the guy died.*

"Q. *What did French say?*

"A. *Subject to correction, I believe he said he heard about the tear gas. I don't know much else. That's all I can recall.*

"Q. *All right now. Let's go back to Bill Chance. You talked to Bill Chance.*

"A. *Basically the same answer to the same question by me.* (R. p. 7338)

Johnson Changes His Aug. 3, 1966 Deposition.

"Q. Do you remember you were asked whether or not you had those names from this deputy, and that you said that you merely got the impression that they would talk if you could get them out of there?

"A. I think I did say that on my deposition.

"Q. Well, first, let's cover it this way: What is the fact? This refers to Cottey, doesn't it?

"A. Yes, it does. (R. pp. 7346, 7)

"Q. Mr. Johnson, are you willing to say positively that Arthur Cottey gave you the names of these four men, John Martin Young, Forest Stalnaker, Otto Dearing, and Ronald Burton and told you they had seen that beating and that they would talk? Would you say positively that Arthur Cottey said that to you?

"A. Yes, he did. I would." (R. p. 7350)

Ten pages later the subject is further explored:

"Q. Incidentally, when Arthur Cottey called you and gave you the names of these prisoners, did he actually tell you that they would talk to you about the Reagan murder? Or did he just say that they wanted to talk to you?

"A. I think Mr. Cottey told me that all of them would talk to me, if I could get them out of that Jail to talk to them.

"Q. Did he tell you they would tell you about the Reagan murder case?

"A. That's what we were talking about, Cottey and I. That's what we were talking about, the reference for which he gave me these names." (R. pp. 7359, 60)

"Q. Now then, do you tell the Jury, will you tell the Jury, whether or not Arthur Cottey told you that Charles P. McAdams would tell you that Elmer Reagan was beaten by Sergeant King, or did you just get that impression?

"A. At the time that my oral examination was taken, I answered those questions to the best of my recollection, and I am trying to do so now. My best recollection now is that Mr. Cottey did say that McAdams would tell me about this beating, regarding King and Reagan.

"Q. Did he say that he had tear-gassed Reagan?

"A. Yes.

"Q. Obviously so. You still thought so when you talked to McAdams.

"A. Yes, sir.

"Q. All right. And then will you agree that I am correct, that in the deposition that I took from you on the 3rd day of August 1966, you did not say that Cottey said that McAdams had told him that he had seen Reagan tear-gassed or beaten?

"A. I agree that there is a contrast between then and this time.

"Q. Well, that has answered my question. You come half way but didn't come all the way.

"A. I think that is." (R. pp. 7362, 3)

Johnson Had Spread the Rumor of King-Reagan.

"Q. *So then you started asking a number of people if "they had heard this story. Is that right?*

"A. *That's correct.—Now which story are we—?*

"Q. *Well, you tell me what the story is.*

"A. *The story that Mr. King had beaten Reagan, tear-gassed him, beaten him again, and that Reagan had been taken to the Hospital and died.*

"Q. *Now that's the story that you started telling, on the advice of Harold Goodman, when he predicted that eventually you would get a tip?*

"A. That was the information I was attempting to verify.

"Q. That's the story that you told to various people down around the Jail and asked them if they heard anything about it; is that right?

"A. I didn't do much talking down around the Jail, to anybody.

"Q. All right, out away from the Jail, wherever it was you talked to people.

"A. *That is the information I attempted to verify, yes.*

"Q. *And you didn't ask them if anyone had died that had been beaten, or ask them to tell you of anything unusual, any unusual violence they knew about. Is that right? You related the story to them. Is that right?*

"A. *It's possible.*

"Q. *Why sure, it's possible. We know it's possible but we want to know whether you did.*

"A. *There are various ways of asking questions and trying to verify information. Sometimes I told*

people I talked to, what I had heard. Sometimes I just asked them, 'Anything going on down there? that's got the lid on it, that you know about?'

"Q. *How many people did you ask if they had heard this particular information?*

"A. *I don't recall the number.*

"Q. Well, when you say 'a number,' would you give us the minimum or the maximum?

"A. I don't know how I could do that. My tipsters that verified the information are the only ones I definitely tried to remember. There were a lot of people that I talked to. *I think I talked to some attorneys.*

"Q. *Did you talk to Bill Erbecker?*

"A. *I might have.*

"Q. Well now, Bill's down there a lot, isn't he?

"A. So are a lot of the attorneys, but they don't get back in the Jail all the time.

"Q. Bill Erbecker is there a lot, isn't he?

"A. Well, you'll have to ask Mr. Erbecker about that. I don't know how often he's in the Jail.

"Q. All right. Did you tell him the information you had received?

"A. I don't recall. I might have.

"Q. *How about Frank Hughes? Did you ask Frank Hughes?*

"A. *I don't recall asking Frank. I might have.*

"Q. *Remember a conversation you had with Frank Hughes in the City-County Building Cafeteria shortly after William A. Brown was indicted and Frank Hughes was appointed to defend him?*

"A. *I had a lot of conversations with Frank.*

"Q. *Do you remember a conversation you had with him when he told you about passing some money to Robert Atwell in the Speedway Magistrate's Court?*

"A. *That's right. I heard about it. I didn't know about it.*

"Q. *All right, you asked him about it then, didn't you?*

"A. *I did.*

"Q. *And that was right after he had been appointed to defend William A. Brown?*

"A. *Well, what's this? I don't understand this. What's this all about?*

"Q. *You don't have to understand it. All you have to do is answer the questions.*

"A. *Frank Hughes asked me, 'Rick, you hear a lot of things. Have you ever heard anything about me?' And I said, 'Yeah, Frank, I have.'*

"Q. What was it?

"A. I told him that a deputy sheriff had seen him pass money to Bob Atwell, that I had heard that. And he said, 'Rick, that happened.' Says, 'You know what that was? I loaned Bob two bucks to eat on.' That's what he said.

"Q. You told him you knew about that?

"A. I told him I had heard about it." (R. pp. 7340, 44)